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WRITTEN TESTIMONY ON DRAFT LEGISLATION AFFECTING STATE PROCURMENT/ACQUISITION OF ADP EQUIPMENT, SERVICES AND SUPPLIES



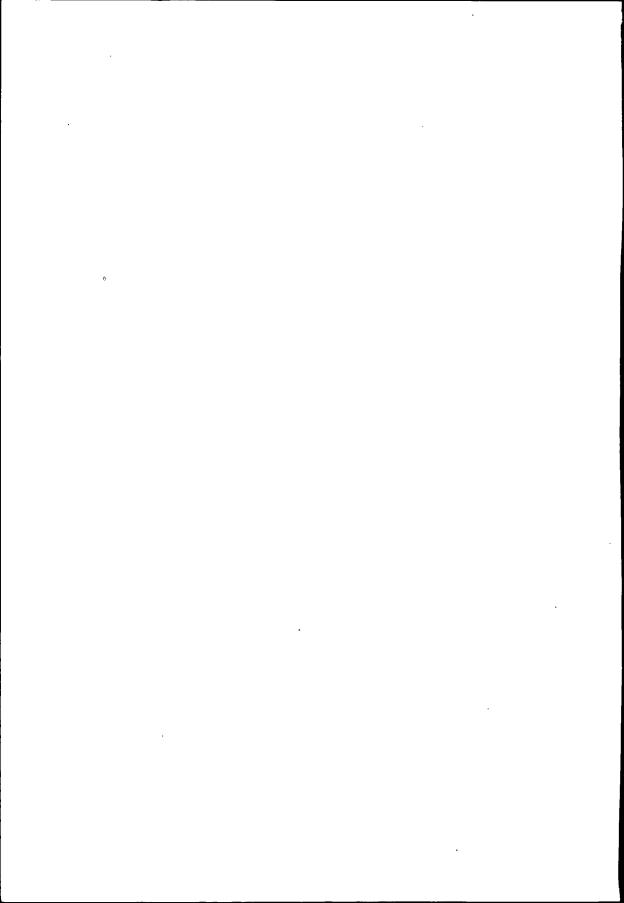
AUGUST 1976

HOUSE COMMITTEE ON APPROPRIATIONS

MARYLAND GENERAL ASSEMBLY

ANNAPOLIS, MARYLAND 21404





WRITTEN TESTIMONY ON DRAFT LEGISLATION AFFECTING STATE PROCURMENT/ACQUISITION OF ADP EQUIPMENT, SERVICES AND SUPPLIES



AUGUST 1976

SUBCOMMITTEE ON STATE DATA PROCESSING
HOUSE COMMITTEE ON APPROPRIATIONS
MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21404

SUBCOMMITTEE ON STATE DATA PROCESSING HOUSE COMMITTEE ON APPROPRIATIONS

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August 2, 1976

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TO THE MEMBERS OF THE HOUSE COMMITTEE ON APPROPRIATIONS AND OTHER INTERESTED INDIVIDUALS:

The Subcommittee on State Data Processing, appointed by the House Committee on Appropriations, is currently undertaking a comprehensive study and analysis of the management, utilization, structure, expenditures, and benefits of the automatic data processing (ADP) resource in the State of Maryland in consonance with the charter of responsibilities delegated to this Subcommittee.

During the course of the Subcommittee's deliberations to date, a volume of information has been acquired on ADP contracts/procurement issues. A wealth of this material is contained in the front of this report. The Subcommittee has drafted several bills on ADP contract/procurement policies in an attempt to overcome some of the major problems now encountered in the procurement phase. We have invited written testimony on these bills and the primary purpose of this document is to reflect the comments from this survey of agencie: In the legislative, judical and executive branches of State government including the private sector.

It is the intention of the Subcommittee to make use of this material when compiling the Subcommittee bill which will be recommended to the full Committee on Appropriations for introduction as a Policy Committee bill during the 1977 Session of the Maryland General Assembly.

The Subcommittee would welcome any comments from persons within government, as well as from persons in the automation community interested in State computerization.

Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations

DFR/DHP/bjg

SUBCOMMITTEE CHARTER - 1976 INTERIM

Because of the magnitude and growing legislative concern over the subject of State automatic data processing (ADP), the Subcommittee on State Data Processing is created and charged with the responsibilities delineated below. The Subcommittee need not limit its activities to only the specific charges indicated herein.

- Study and develop a uniform and equitable procurement policy in the form of legislation concerning the purchase of ADP equipment (including peripherals), software, services and supplies.
- Examine and make recommendations on the Criminal Justice Information System (CJIS); created under H.B. 1106 Chapter 289, Acts of 1976; proposed by the Governor's Commission on Law Enforcement and the Administration of Justice (LEAJ).
- Analyze and make recommendations on the current organizational structure of State data processing.
- Review and make recommendations on the policies and practices relating to the security and privacy of personal information which is resident in State data systems.

Inasmuch as the Statewide data processing budget has <u>tripled</u> over the last six years to its present level of roughly \$35,000,000 along with many other major problematic factors which have evolved, the members of the Subcommittee are strongly urged to dedicate themselves to the development of some highly significant legislative policy actions which will aid in the control and management of this high technology resource which the Maryland General Assembly has failed to comprehend over the past decade.

JOHN R. HARGREAVES, CHAIRMAN HOUSE COMMITTEE ON APPROPRIATIONS

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STATE ADP PROCUREMENT PRACTICES

Origin of the Item

This study item originated directly from one of the major charters of the House Appropriations Subcommittee on State Data Processing:

To study and develop a uniform and equitable procurement policy in the form of legislation concerning the purchase, lease and rental of ADP equipment (including peripherals), services and supplies.

Its primary derivation was from three sources: (1) the registration of numerous complaints to the legislature over a period of one year from computer service and equipment vendors, (2) the results of a hearing held last September on the subject of ADP procurement, and (3) the Subcommittee's review of several recently issued Requests for Proposals (RFPs) for the acquisition of either replacement or new computer equipment.

Current Legal References

Legal precedence concerning the issue of computer system acquisitions are found in a variety of forms. These forms include statutes, executive orders of the Governor, opinions of the Attorney General, and administrative procedures. Each of these are discussed below.

Statutes

With respect to statutorial mandates relating to procur ment, the Department of General Services is the central purchasing authority for the State and is responsible as follows:

Every department, board, commission, bureau, division, institution and agency of this State, hereinafter called the using authorities, shall purchase all materials, supplies and equipment, through or with the approval of the Secretary of General Services. 2

Furthermore,

It shall be the duty of the Secretary of General Services to contract for or purchase all materials, supplies and equipment, except those which the Secretary may determine are of a strictly perishable character, or which the Secretary may determine it is impractical for the using authorities to purchase through or with the approval of the Secretary, or which may be purchased by using authorities under the authority and with the approval of the Secretary. §

¹ Public Hearing held before the House Appropriations Committee on September 24, 1975 with testimony from ADP equipment and service vendors.

² Annotated Code of Maryland, Article 41, Section 231G. Para. (a). Chapter 97 of Legislative Acts of 1970.

³ Annotated Code of Maryland. Article 41, Section 231G. Para (c). Chapter 97 of Legislative Acts of 197D.

The Department of General Services, while continuing to acquire ADP supplies and materials, has deferred to the prime statute 4 which is excerpted in part below:

The purchase, lease or rental of mechanical or electronic data processing equipment for all State departments and agencies shall be reviewed and approved by the Secretary [of Budget and Fiscal Planning, specifically by the Chief of the Management Information Systems Division] prior to the purchase, lease or rental.

Before such contracts may be consummated, two other provisions of the law must be met. First, the certification of corporate registration and payment of fees must be acknowledged in accordance with Article 23, Sections 128 through 130. Second, the Board of Public Works must approve certain service or hardware contract pursuant to the following:

The Board of Public Works shall in like manner supervise the expenditure of all sums appropriated for the acquisition of land, buildings, equipment, new construction and other capital expenditures, except in connection with State roads, bridges and highways, whether made through the medium of a budget bill, a supplementary appropriation bill or a State bond issue bill, and all contracts for the expenditure thereof shall be subject to the approval of said Board before the same are executed, after review by the [Secretary of the Department of General Services].

Governor's Executive Order

The Governor issued an Executive Order on October 28, 1969 on the subject of planning and control of the State automatic data processing (ADP) function. Paragraphs E through H address the relevant issue of acquisition/disposal of ADP equipment, changes to ADP systems, and contracting. These references are extracted and presented below for informational purposes:

- E. Acquisition of new equipment, augmentation of existing equipment, or disposal of equipment no longer required must have prior approval of the Department of Budget and Fiscal Planning.
- F. Acquisition of equipment by one agency will not preclude the use of that equipment by another agency. Where feasible, an agency will make machine time available on a regular recurring basis to meet the requirements of the agency not having equipment. Centralization of Data processing services will be fully exploited where cost reductions without adverse effect can be achieved.
- G. All changes effected by any department or agency pertaining to data processing systems shall first be reviewed and approved by the Department of Budget and Fiscal Planning.

⁴ Annotated Code of Marvland. Article 15A, Section 23B, last sentence. Chapters 132 and 78 of the Legislative Acts of 1966 and 1969, respectively.

⁵ Annotated Code of Maryland, Article 78A, Section 7, Para. (1).

H. All contracts or partnerships affecting State ADP resources will be accomplished by and through the Department of Budget and Fiscal Planning.

Attorney General's Opinions

In 1969, a request was made for an Attorney General's opinion on the confilct between the provision of the University of Maryland "Autonomy Act of 1969" and Article 15A, Section 23B of the Code. The opinion rendered by the Attorney General was that Article 15A must prevail and the University was subject to the provisions of Section 23B, contained therein.

Recently, the Department of Budget and Fiscal Planning made an inquiry of the Attorney General to ascertain whether the statutory responsibility under Article 15A, Section 23B of the Department to oversee the procurement of data processing equipment by all State departments and agencies extends to the Maryland Automobile Insurance Fund (MAIF). The opinion of the Attorney General is quoted below in summary form:

We therefore conclude that Article 15A, Section 23B of the Code in referring to the "several departments and agencies of the State government" means those agencies which are dependent upon appropriated funds, or other State monies, for the revenues needed for their maintenance and operation, and which are subject to the State budgetary process; it thus does not include MAIF. Accordingly, the responsibility of the Secretary of the Department of Budget and Fiscal Planning under Article 15A, Section 23B for planning and controlling data processing in the several departments and agencies of the State, and for reviewing and approving the acquisition of data processing equipment by such departments and agencies, does not extend to MAIF.

Administrative Procedures

The Maryland State Department of Budget and Fiscal Planning Manual contains a procedure on budgetary approvals of RFPs and contractual services prior to an award of a contract for goods or services by an agency. These procedures have been adopted by the Board of Public Works.

The <u>State of Maryland Data Processing Standards Manual</u> issued by the Management Information Systems Division of the Department of Budget and Fiscal Planning contains various administrative procedures/requirements ¹⁰ to be followed with respect to RFPs, contracts and proposal evaluations. Appended to this report as Exhibit A is a copy of this procedure.

⁶ Annotated Code of Maryland, Article 77A, Section 15, Para. (e).

⁷ Single signature Opinion of Assistant Attorney General Oster to Budget Secretary James P. Slicher dated January 15, 1970.

 $^{^{-8}}$ Double signature Opinion to Budget Secretary R. Kenneth Barnes dated March 29, 1976.

⁹ Procedure 02.01.03 dated May 1, 1975.

¹⁰ Procedure 15-100 series, dated December 5, 1975.

The Department of General Services has promulgated various rules and regulations dealing with acquisition of goods and services. Although advertising is not a requirement, competitive bidding is mandatory on all items valued over \$100.

Problem Specification

Even with the proliferation of mandates and guidelines described above, there apparently exists widespread problems with respect to the acquisition of computer hardware and peripherals, supplies and consultant services. Some specific problems and observations developed by the staff include:

- Many instances where agencies have failed to comply with specific mandates/procedures.
- RFPs not properly submitted to the Department of Budget and Fiscal Planning for prior review and approval.
- 3. Allegations of the awarding of many single-source contracts to vendors.
- Lack of guidelines to establish when an agency should contract via sole-source or competitively.
- Assignment of unreasonable deadlines for receipt of proposals from vendors in a competitively bid situation.
- Problems with the establishment, maintenance and universal utilization of current lists of qualified (either prequalified or those expressing an interest) suppliers.
- Lack of guidelines on liquidated damages, performance and bid bonds, small/minority business set-asides, use of exclusion clauses, bidders conferences, etc.
- 8. Failure to widely advertise procurement, lease or rental solicitations.
- Lack of a post-audit, testing and inspection program to assure that the State gets the types and quantities of items/services called for in the solicitation/contract.
- No centralized purchasing authority each user agency generates their own RFP, subject to MISD approval, and issues and administers it under their own jurisdiction.
- Increased probability for compromising contractual data/giving unfair advantage to various vendors when dealing with so many issuing users.
- 12. No use of a centralized contracting officer/specialist.
- 13. Lack of use of competitive negotiations.
- Need for establishing written policies and procedures for a specification and standardization program.

Considering the magnitude of these perceived problems and the amount of public funds available for contractual commitment each year, all State officials entrusted with the responsibility of making wise decisions on budgetary expenditures should strive to assure impartiality, integrity and cost savings and economy in government spending. In an attempt to learn more about this subject, a public hearing was scheduled for June 16, 1976.

Summary of Testimony

The topic of the June 16, 1976 meeting of the House Appropriations Subcommittee on State Data Processing was "State ADP Procurement Practices". The Subcommittee had arranged to have various representatives of both State and Federal government present to discuss with the Subcommittee certain aspects of public procurement of ADP services, equipment and supplies. The primary intent of this session was not so much to challenge or analyze current problems but to be one of a learning or educational exercise to aid the Subcommittee in comprehending the ramifications of the present system used in the State and to correlate it to the Federal program.

Mr. Dennis H. Parkinson, staff coordinator for the Subcommittee, made copies of his staff report available to each member and presented a flip-chart overview to the Subcommittee. He discussed the origin of the study, current legal references which are applicable to ADP acquisition, and a rather detailed explanation of various problems which appear to be recurrent in the area of ADP equipment, service and material acquisitions.

Federal Social Security Administration

Mr. Jack Raines, Chief of the ADP Procurement Control Branch of the Federal Social Security Administration (SSA) and Mr. Thomas O'Hare, a member of this branch, appeared before the Subcommittee at its invitation to present some background information on the mechanics of the Federal computer and services acquisition program. Mr. Raines concurred that the problems mentioned in Mr. Parkinson's presentation appear universal in nature. He indicated that one major problem missing from the list was the one dealing with benchmarking and acceptance testing.

Mr. Raines stated that there is no such thing as sole-source justification for contract awards at SSA. Every acquisition must be obtained through competitive bid "Request for Proposal" (RFP), based on need and accompanied by a cost/benefit analysis. The funds must have been appropriated in order to acquire. The General Services Administration (GSA) must review and approve all RFP's and advertisement in the "Commerce Business Daily" must be accomplished of every solicitation. In terms of providing time parameters for vendors to prepare proposals, there is never less than 30 calendar days given. RFP's are divided into two major areas: (1) mandatory requirements and (2) desirables. The mandatories must be met otherwise the vendor is disqualified. Desirables are items which the government prefers but are not totally required. In benchmarking, if the contractor doesn't perform in accordance with the time and performance limitations, the contract is defaulted on and no payment is made.

Mr. Raines indicated that proposals in response to Federal RFP's are divided into two separate packages: the technical proposal and the cost proposal. Cost proposals are withheld from the technical personnel evaluating the technical proposals. The pricing information is concurrently evaluated by the contracts

people separately and without disclosure until both evaluations have been concluded. Based upon the evaluation criteria assigned, the proposals are ranked and the lowest qualified bidder is generally awarded the contract. Mr. Raines indicated that in those instances where the specifications are clear-cut and the goods and services offered by vendors are comparable, an IFB (Invitation for Bid) is issued which contractors need only submit a firm cost bid. Low bidder wins. In the field of ADP, this type of procurement is not widely used.

Mr. O'Hare pointed out that the <u>Federal Procurement Regulations</u> of which there are two lengthy volumes, would certainly be of interest to the Subcommittee and recommended that the State purchase a copy from GPO.

Chairman Rasmussen asked how the Federal "Brooks Act of 1965" has effected the SSA acquisition program. Mr. Raines indicated that it has had a major impact on all Federal agencies. He stated that its intent is to ascertain economies of scale. Specifically, GSA polls each agency every year to acquire the number of various pieces of ADP equipment which will be necessary for the upcoming fiscal year. GSA will acquire this hardware and peripherals through mass procurement from suppliers thereby reducing the unit and aggregate price due to volume ordering.

Mr. Raines stated that debriefings are routinely held to apprise vendors of why they didn't win the contract and will make the winning proposal available for review by the other respondents upon request.

Delegate Hickman asked how do you draw a line between the use of single-source acquisition for upgrading with the incumbent's equipment and competitive bidding using an RFP? Mr. Raines responded by saying that at SSA, complex simulations and models are used to emulate the situation and to help answer that question. In most instances, it is wise to issue an RFP.

Chairman Rasmussen asked Mr. Raines how the small/minority business setaside program has impacted Federal government. Mr. Raines indicated that this program is very poor because in most instances these firms cannot qualify in competitive bids due to lack of expertise and understanding of the problems.

Delegate Nichols inquired as to the organization from which Mr. Raines and Mr. O'Hare were from within SSA. They indicated that they were not from the Procurement and Contracts Branch but from the Bureau of Data Processing and were considered technical people who deal with contracts justification for ADP.

Mr. Raines indicated that the SSA has a mixed bag with respect to the various name brands of equipment at SSA. Maintenance has been a problem with such a large variety of equipment; each supplier blaming the other for problems. He indicated that they are attempting to go with a third party maintenance contract which has been budgeted in the FY 1977 appropriation. The U. S. Marine Corps, the Veterans Administration, the U. S. Department of Transportation have already acquired the services of a third party maintenance contractor.

Mr. Raines closed by inviting the members of the Subcommittee to the SSA complex at Woodlawn for a tour of how the day-to-day processing of RFP's and contracts take place.

State Department of General Services

Representatives of the Department of General Services included:

- Mr. Robin J. Zee, Director, Office of Central Services,
- Mr. Stanley J. Hanna, Chief, Purchasing Bureau, and
- Mr. Jack A. Kelly, Administrative Supervisor, Purchasing Bureau.

Mr. Zee briefly explained the methodology used in the Purchasing Bureau to acquire goods and services for the State, exclusive of ADP hardware and services. He indicated that competitive bidding is accomplished on every commodity or service to be acquired. Vendors are given from 10 to 12 days to return bids. These are opened publically at a specified time. Copies of the bid packages are available in the lobby of the State Office Building in Baltimore. Because of the 8,000 vendors on the current bidders list, of which 3,000 are estimated to be active, the Department does not advertise nor do they send bid packages to all 3,000 suppliers. Usually pre-bid conferences are held, depending on the magnitude of the procurement. A contract is then awarded to the lowest qualified bidder and delivery is then made.

Emergency purchase provisions exist for those cases where acquisition of a commodity must take place due to critical timing and the urgent need, according to Mr. Zee. He pointed out that there has never been any gross abuse of this provision because emergency purchases have always been less than two percent of the total acquisitions. He cited for example that DGS authorized the Maryland Port Administration to acquire another crane under the emergency provisions after the one at the Dundalk Terminal was blown over in a recent storm.

Mr. Kelly distributed a package of material to each legislator which contained the following:

- Bidders Application
- Purchase Order
- Out of Schedule Requisition
- Index of Commodities of the Purchasing Bureau
- Actual Emergency Purchase Report
- Emergency Purchase Regulations
- General Rules, Regulations and Conditions
- State & Local Government Purchasing, COG Report
- Quarterly Requisition Form

Chairman Rasmussen asked why were data processing equipment listed in the commodity index? Mr. Zee indicated that the index, which originated from the State of Texas, was adopted and copied verbatum by the Purchasing Bureau as a standard index of commodities and that DGS did not acquire ADP equipment. He indicated that the State of Texas paid about \$170,000 to have this index prepared and costs to the State of Maryland were zero.

Chairman Rasmussen asked if DGS were given the appropriate resource, what would be the Impact of having the Purchasing Bureau acquire ADP paraphernalia? Mr. Zee said there would be an initial slowdown in the activities, however, it should have no major impact on DGS.

Mr. Zee said that he has six buying departments in the Purchasing Bureau and has two buyers assigned based on commodity category to each department. He indicated that H.B. 1039, which provides for a small business set-aside program, was recently signed by the Governor and that the Department is currently developing rules and regulations to administer this program. In closing, he indicated that the DGS policy for acquisitions is to make every procurement as competitive as possible, and attempt not to indicate a brand name in the solicitation. If a brand name is included, it should be followed by the phrase "or equivalent".

Maryland Department of Transportation

Mr. Robert H. Cox, Assistant Director, Management Information Services on the staff of the Transportation Secretary presented an overview for the Subcommittee on the recent acquisition of hardware and the consolidation effort of ADP at the Motor Vehicle Administration. He indicated that the need exists for both competitive bidding and sole-source contracting.

In explaining the chronology of events which led to the acquisition of the additional computer at MVA, which is to be transferred to the Office of the Secretary, Mr. Cox indicated that MDOT originally issued a pre-RFP letter to numerous vendors. They then followed up with the RFP to which there were five respondents. One was immediately rejected and the other four were qualified. Burroughs was awarded the contract because of low bid along with other key advantages which were contained in their proposal which the others did not provide. In negotiating with Burroughs, MDOT wanted their own written contract, not a standard vendor contract. In the contract, a performance bond and liquidated damages were required.

Management Information Systems Division

Mr. Philip G. Martin, Chief, Management Information Systems Division of the Department of Budget and Fiscal Planning and Mr. Phillip E. Foos, Contracts and Procedures Coordinator presented some material on current ADP acquisition practices. Various procedures were distributed. These procedures are contained in the State Data Processing Standards Manual, and provide guidelines to all agencies in processing applications for computer, hardware, supplies and services.

Mr. Martin indicated that the National Association for State Information Systems worked on three model contracts: one in the area of data entry, another in consulting/services, and a hardware contract. Little or no agreement was obtained on the model hardware contract. Mr. Martin indicated that Mr. Foos has developed a document containing sample clauses for contracts but the use of this document has not been approved by the Attorney General. There is no Assistant Attorney General on the Budget Bureau's staff; however, the Attorney General provides legal advice on an as-needed basis.

Mr. Martin stated that in using a liquidated damages clause, it works as a ''double edge sword''. Not only must the supplier be prepared to deliver on a certain date, the government must also be prepared, otherwise it works against the State.

In terms of detailed acquisition planning data, Mr. Martin explained that in the annual budget requests for each data center in those agencies that have one, DP forms 1301, 2 and 3 are included. These forms include a breakdown of systems applications now running and to be run in the next fiscal year; statistics on present hardware utilization; and hardware inventory in the past fiscal year, that which is currently installed and that which is planned for in the next fiscal year.

Mr. Martin indicated that he has a vendor file which contains about 300 names. He stated that this file has been referred to as a Bidders List; however, this is incorrect and should be referred to as a vendor reference file. Advertising of RFP's has been implemented to insure fairness of RFP distribution.

Finally, Mr. Martin stated that a need exists to publish some additional documentation which contains guidelines to agencies in attempting to justify single-source procurements.

Subcommittee Action

The Subcommittee has developed five bills on the subject of procurement/contracting for data processing services and equipment. The purpose of the bills is to clarify and/or rectify various problems encountered in the current ADP procurement/contract regulations and procedures.

The Subcommittee has solicited from 65 agencies and individuals their views on these bills and general comments with respect to ADP acquisitions. Those individuals responding to the Subcommittee invitation to comment are contained in this report. Copies of these bills are contained in this report as Exhibits B through F.

Exhibit B reflects Bill Number I whose source is the current Department of Budget and Fiscal Planning regulation on the subject of ADP goods and service acquisition. This bill merely codifies the executive procedure.

Bill Number 2, shown as Exhibit C, paraphrases the current architects and engineers subtitle under the Department of General Services and provides some modification to the Department of Budget and Fiscal Planning responsibility for ADP contracts and procurement.

Under Bill Number 3, illustrated as Exhibit D, the use of competitive bidding on all contracts for ADP equipment, personal services and supplies is mandated. The source of this legislation is the current California statute.

Bill Number 4, indicated as Exhibit E, is extracted from the Federal Brooks Act of 1965 (PL 89-306). It broadens the powers of the Department of Budget and Fiscal Planning with respect to fiscal management and control of ADP procurement/contracts.

Finally, Bill Number 5 (Exhibit F), provides for the creation of an ADP Systems Division under the Legislative Auditor and specifies other organizational and functional changes in the management, control, coordination and review of ADP in the State: Its source is the current Texas statute.

The intent of the Subcommittee with respect to these draft bills is to obtain a consensus of opinion on their ramifications and to aid the Subcommittee in formulating an equitable and uniform ADP contract/procurement policy in the form of one bill.

STATE OF MARYLAND DATA PROCESSING STANDARDS MANUAL	Page Procedure No.
	Effective Date Revision No. Dec. 5, 1975
SUBJECT: CONTRACTUAL PROCEDURES	TOPIC: CONTRACTUAL OUTSIDE SERVICES

1. GENERAL

This section establishes the guidelines and procedures for contracting for data processing equipment, services and supplies. All Requests for Proposals and contracts for goods or services are subject to the regulations of the Department of Budget and Fiscal Planning concerning the award of contracts. These regulations are published in the Department of Budget and Fiscal Planning's Policies and Procedures Manual. The procedures and guidelines in the Data Processing Standards Manual supplement the Department of Budget and Fiscal Planning regulations as they apply to data processing services.

2. RESPONSIBILITIES

2.1 Department of Budget and Fiscal Planning

Primary responsibility for planning and control of the State automatic data processing function is vested in the Department of Budget and Fiscal Planning. Within the responsibilities are:

- a. Approval of the acquisition of new equipment, and software, augmentation of existing equipment, or disposal of equipment no longer required.
- b. The approval of all contracts, amendments, letters of intent, and partnerships affecting State ADP resources.

2.2 Management Information Systems Division Staff

The Management Information Systems Division Staff will:

a. Coordinate within the Department of Budget and Fiscal Planning, all matters concerning revenue resources and disbursements associated with the lease, purchase or sale of State ADP equipment and/or services, and software.

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- b. Establish and maintain a list of ADP contractors who have indicated a desire to provide goods or services to the State.
- c. Monitor or participate in the preparation of requests for proposal to purchase or lease ADP software, equipment or services required by the State and participate in the evaluation of such proposals when received.
- d. Approve contract awards for ADP goods and services.
- e. Provide guidelines for ADP rental and maintenance contracts.
- f. Maintain cognizance of contractor performance.
- g. Maintain liaison, through the Office of the Secretary, with the Attorney General, regarding matters of legal sufficiency.

2.3 Data Processing Service Center

The Data Processing Service Center will:

- a. Forward all requests for ADP hardware, software, supplies, or contractual services, together with justification therefore, to the Management Information Systems Division Staff for approval. Where requests are made in connection with major system development projects, the supporting documentation shall include the feasibility study, systems specifications, detailed systems design, and a cost/benefit analysis.
- b. Assist the user agency in the preparation of the request for proposal, and associated benchmarks, as appropriate, and the evaluation of proposals upon receipt.
- c. Assist user agencies in preparation of requests and supporting justification.

STATE OF MARYLAND DATA PROCESSING STANDARDS MANUAL	Page Procedure No 3 of 5 15-100	
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SUBJECT: CONTRACTUAL PROCEOURES	TOPIC: CONTRACTUAL OUTSIDE SERVICES	

2.4 User Agency

The user agency will:

- a. Forward all requests for major system changes, supplies, services, or contractual assistance to the Management Information Systems Oivision Staff through the Oata Processing Service Center serving the agency.
- b. Participate in the feasibility study, detailed system design and specifications and preparation of benchmark and test data.

3. PROCEOURES

3.1 Equipment and Services (Programming, Consulting, Data Preparation)

When it is determined that new equipment is required, or a modification to an existing equipment configuration is necessary, or programming, consulting or other AOP services are required from outside sources, the Budget Approval of Requests for Proposal and Contractual Services Form (BB-4) will be completed and forwarded together with supporting documentation to the Management Information Systems Division Staff as prescribed in Procedure 12–100. Supporting documentation to justify the request for equipment, equipment changes, software, or outside services will depend on the type of equipment or service required and the estimated level of effort involved. The Management Information Systems Division Staff will review the request and if it is considered justified, will obtain the necessary approvals within the Ocpartment of Budget and Fiscal Planning. Evaluation of the request will be primarily based on the accompanying documentation and justification.

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Criteria for the evaluation of a request will comply with the appropriate criteria prescribed in Procedure 12-100.

All requests originating through a user agency or data processing center in which the intent is to acquire, enhance, dispose of, or modify ADP 2.2.

resources, or accomplish a contractual agreement, must be approved by the Department of Budget and Fiscal Planning. This includes those instances of enhancement or modification where no new contractual agreement is executed.

Upon approval, with the assistance and participation of the user agency and the Management Information Systems Division Staff, the Data Processing Center will prepare and issue the Request for Proposal (RFP). Prior to issuing the proposal, the Data Processing Center will coordinate with the Management Information Systems Division Staff a list of vendors to whom the RFP will be submitted. The RFP will follow the format and guidelines contained in Procedure 15–102.

Proposals will be objectively evaluated jointly by the Management Information Systems Division Staff, the Data Processing Center, and the user agency. Procedure 15-103 contains the parameters for evaluating vendor proposals. The specific criteria for comparative evaluation of the proposed equipment is illustrated in Procedure 14-100.

All contracts involving ADP resources will be submitted to the Management Information Systems Division who will review the contract

and assist in negotiations, where necessary, in the best interests of

the State.

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The Management Information Systems Division will coordinate the necessary Department of Budget and Fiscal Planning approvals of the contract award to the successful bidder.

Approval from the Department of Budget and Fiscal Planning allows the agency to implement the contract. The proposed contractor must be clearly advised by the agency that the contract is not binding without approval by the Department of Budget and Fiscal Planning and signature by the agency.

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1. OFFINITION AND OBJECTIVES

Requests for Proposal (RFP) represent the State's official inquiry to potential bidders for proposals, and associated costs, to perform specific tasks or to provide specific services, software, or equipment. The objective of an RFP is to obtain:

- a. Proposals and bids from potential vendors, eager to perform the work.
- b. Proposals and bids which are readily analyzed and evaluated.
- c. Proposals and bids which serve as a sound base line for contract negotiation.
- d. Schedule of work to allow measurement of performance.
- e. A report, system or equipment which meets stated objectives.

2. LETTER OF TRANSMITTAL

The RFP will be submitted to potential bidders, accompanied by a letter of transmittal to the prospective bidder's management. The content of the transmittal letter is as follows:

- a. Concise statement of the project.
- b. Type of bid desired.
- c. Due date of the proposal.
- d. Responsible personnel to whom technical and contractual questions may be posed.
- e. Right of State to reject proposal.

It should be noted that detailed information contained in the transmittal letter should be excluded from the introduction of the RFP. This will avoid the necessity to revise the RFP itself because of unforeseen changes in schedule, procedures or personnel assignments.

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The agency must provide that a copy of all proposals be available to the Management Information Systems Division upon request. In addition, all Requests for Proposals must include wording that the State reserves the right to reject any or all proposals without cost or detriment to the State.

3. RFP FORMAT

The RFP will be comprised of the organizational elements listed below. The guidelines which address the content of each element are discussed in the paragraphs that follow.

- a. Introduction
- b. Contractual Requirements
- c. Technical Requirements
- d. Reference Occuments

3.1 Introduction

The Introduction to the RFP should highlight key contractual and technical aspects of the RFP which are significant in the State's choice of the successful bidder. Typical topics are:

- a. General description of the project.
- b. Location unusual site conditions.
- c. Special technical and contractual conditions.
- d. Alternative approaches, mandatory or optional.
- e. Proposal organization, mandatory or optional.
- f. Basis of bid analysis and contractor selection.

3.2 Contractual Requirements

This section of the RFP is oriented toward obtaining bidder-provided data

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which will facilitate comparative price analysis and contract negotiations, and the determination of the adequacy of the bidder's resources and business procedures to accomplish the desired work. A typical outline is presented below:

- a. Purpose and Objective A concise, well-planned statement regarding the reason for the project and its desired results.
- b. Scope of Work A concise statement of the intended breadth and depth of the project. The organizational and functional boundaries, as well as the respective responsibilities of the bidder and the State, must be clearly defined and established.
- c. Type of Bid and Contract The type of bid and contract should be selected with the advice and consent of the Management Information Systems Division Staff. The following discussion offers general information concerning the various types of contracts available for use. Parameters for the selection of the type of contract should serve as guidelines in the preparation of the remaining contractual and technical aspects of the RFP.

There are numerous variations and combinations of two basic types of contract; fixed price and cost reimbursement.

I. Fixed Price - Under a fixed price contract, the contractor must produce the required items or perform specific services for a firm fixed price or within an established ceiling; else he is subject to penalties as provided in the contract. All contracts should be drafted on this "Fixed" or "Not to Exceed" compensation basis.

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2. Cost Reimbursement - Under this type of contract, the contractor is paid for the cost of material and labor plus overhead expenses and a fee as provided in the contract. The Time and Material contract is a hybrid form under which the contractor is paid a fixed price for each labor hour, including labor costs, indirect expenses and profit, plus material at cost.

Prospective contract types vary as to the degree and timing of responsibility assumed by the contractor for the cost of performance, and the amount and type of profit incentive offered for achievement of or exceeding specific standards or goals. The fixed price contract places the greatest degree of responsibility upon the contractor; the cost reimbursement contract, the least.

In order to employ the fixed price contract, both the contractual and technical requirements of the RFP must contain sufficient precision of detail, clarity, and stability to project a high degree of confidence in the contractor's and the State's probability of successfully providing the service or product under the terms and conditions of the contract. So long as these parameters remain inviolate, the fixed price contract is recommended for use. Generally, where these parameters are compromised, the time and material contract should be utilized. Since

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cost reimbursement contracts require extremely close supervision on the part of the State, they should be reserved for use with other governmental agencies in a partnership or cost—sharing environment.

- d. Proposal Outline Bidders should be requested to submit proposals in two volumes. Volume I will contain the following Sections:
 - 1. Introduction
 - 2. Understanding of the Problem
 - 3. Technical Methodology
 - 4. Project Organization and Management
 - 5. Related Company Experience
 - 6. Personnel Resumes

Volume II should be delivered under separate cover and should contain the company's letter of offer and all pricing and cost supporting documentation.

e. Cost or price breakdown desired - This item of the RFP should be chosen to facilitate comparative cost analysis of the proposals. Standard units of measurement should be employed; for example, cost per 1,000 punched and verified 80-column card; cost per hour of computer CPU time, including unlimited use of peripherals; cost per operating program, including system testing and required documentation; or cost for the final report including preparation and delivery of 100 copies to State Office Building in Baltimore, Maryland.

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- f. State furnished materials A clear statement of the work or office space, services, materials or other assistance that the State will either give or make available for use by the contractor. The conditions under which these materials or services are furnished, and their associated impact on the estimated cost of the contract, should also be clearly specified.
- g. Guarantees required of bidders Herein are specified the necessary guarantees required of each bidder. Normally, failure to comply results in disqualification of the bidder. Since the penalty for failure to comply is so severe, and the cost of the contract may fluctuate greatly with the degree of stringency imposed on the required guarantees, care must be exercised in differentiating between DEMANDS and DESIRES.
- h. Terms of payment A concise statement of the terms and conditions under which the State will compensate the contractor. Care should be given to the choice of timing the payment so as to ensure that the State has received services or products, in value, equal to or greater than (never less than) the compensation. For example, fixed price payment for programming services should not be made until the programs have been completely tested, debugged and documented to the satisfaction of their defined objectives. Payments shall not be advanced by the State, beyond work actually completed, unless so provided under the terms of the contract.
- i. Delivery schedule The timing and order of events, either

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mandatory or optional. Care must be taken to identify the respective responsibilities of all parties concerned. For example, if the State reserves the right to detail check the design specifications of a sample of a product before accepting delivery or production amounts, the obligation exists to clarify the required timing and actions of both the contractor and the State. Since tight delivery schedules generally have an adverse impact on price, the established schedule must be realistically tenable.

- j. General contract clauses A statement of the highlights of standard clauses, terms and conditions, to be included in any contract which may ensue. A "caveat" as to the disqualifying concensus for failure to comply is normally included. Refer to Department of Budget and Fiscal Planning Policies and Procedures Manual for checklist of general contract clauses.
- k. Business, accounting and reporting procedures A statement of the management methodology to be employed during the contract's period of performance.

3.3 Technical Requirements

This section of the RFP is oriented toward obtaining bidder-submitted data regarding the technical solution to the stated problem in sufficient detail to allow analysis and comparison of proposed approaches, evaluation of the bidder's grasp of the problem and the degree to which he is technically qualified to perform the service or provide the product. The specific data provided the bidder will vary according to the type of service or product being solicited by the State. A general format for the

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arrangement of the data is discussed below.

- a. Statement of the Problem The State has a responsibility to provide a clear, accurate and concise statement of the problem, with all supporting data necessary for the bidder to conceptualize and price the solution. A well-planned description of the problem will:
 - 1. Serve as a foundation of requirements to be met.
 - 2. Reduce the number of questions.
 - 3. Serve as a basis for objective comparison among bidders.
 The problem statement should include all pertinent background data regarding both the evolution of the current environment, and its present status.
- b. Technical conditions to be met A statement of the required performance capabilities of the equipment, system or service being solicited. Be sure that all conditions are clearly specified. Care must be exercised in differentiating between mandatory and desirable requirements.

3.4 Reference Documents and Appendices

These are significant only as amplifications to the Contractual and Technical Requirements discussed above. They are placed in a separate section of the RFP for convenience; usually because they are applicable to all projects or because they are too bulky for inclusion in the main body.

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Proposal evaluation is the joint responsibility of the Management Information Systems Division Staff, the Data Processing Service Center, and the user agency.

1. SELECTION COMMITTEE

All proposal evaluation will be conducted by a selection committee, members of which are supplied by the responsible segments of the State data processing community. The committee will be comprised of no less than three nor more than seven members. During the selection process, members of the committee act only in the capacity of determining the selection and do not inherently assume any other administrative authorities.

All meetings and actions of the committee will be documented for review as necessary by authorized parties.

2. GENERAL EVALUATION CRITERIA

The selection committee should first review the submitted proposals in light of their compliance with essential contractual and technical requirements expressed in the RFP. Failure to comply should disqualify the bidder.

3. FINITE EVALUATION OF THE PROPOSAL

Proposals from the remaining bidders should be studied in depth and evaluated in accordance with the criteria listed below.

3.1 Understanding the Problem

This section should consist of an analysis of the problem and should clearly project the bidder's understanding of the problem and its ramification on the State. The following should be considered:

- a. Clear, concise statement of the technical requirements which the proposal fulfills.
- b. Clear delineation of the technical problem, avoiding "parroting" from the RFP.
- c. Deep understanding of the problem convincingly shown.

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3.2 Technical Approach

This section should provide a discussion of the operational environment and an accurate and clear technical description of the proposed system and/or hardware, including drawings or sketches of the proposed configuration. The following should be considered:

- a. Discussion of alternate solutions.
- b. Advantages of proposed approach.
- c. Identification of performance requirements.
- d. Benefits of alternate recommendations.
 - 1. Enhanced performance
 - 2. Lower costs
 - 3. Greater producibility
 - 4. Earlier delivery
 - 5. Simpler maintenance
- e. Attainment of optimum solution.
- f. Identification of difficult areas.
- q. Assurance that performance standards can be met.
- h. Identification of excessive costs or time delays.
- i. Originality of approach, when required.
- j. Allocation of resources for technical problems.
- Inclusion of specific solutions into system heirarchy.
- Description of proposed hardware.
- m. Estimates of performance not exaggerated.
- Deviations from specifications explained.
- o. Consideration of serviceability and ease of maintenance.
- p. Description of special test or support equipment for maintenance.
- q. Consideration of long-range maintenance and logistic problems.

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- r. Justification for replacing existing components.
- s. Justification for unusual component reliability needs.
- t. Explanation of any re-engineering effort needed for hardware.
- u. Explanation of need for proprietary data or techniques.
- v. Avoidance of over-engineering and over-sophistication.
- w. Inclusion of man-hour estimates.

3.3 Delivery Requirements and Scheduling

Delivery is most important. The proposal must not only state the delivery schedule will be met, it must show how it will be met. The proposal should include:

- a. Assurance that delivery dates will be met or bettered.
- Detail regarding master scheduling, programming, follow-up, and other similar functions.
- c. Safeguards in the scheduling system, especially where sub-contractors are involved.

3.4 Project Organization and Management

The proposal should show the company's method of management. It should elaborate on organization, personnel manpower controls. It must demonstrate that the company has an understanding of the external organization relations with the Government or Prime Contractor and with subcontractors necessary to the accomplishment of the project. It must outline the overall management concepts employed by the company and the specific type of management that will be provided for the proposed project. The proposal should indicate that the management of the company:

- a. Understands State's concern with project management.
- b. Has sufficient experience, facilities and personnel.
- c. Will continue a high-level of interest.

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- d. Assumes responsibility for accomplishment.
- e. Is structured to meet managerial needs.
- f. Can provide requisite communications.
- g. Can integrate all project phases.
- h. Understands how project fits into overall State needs.
- i. Provides details on its responsibility concepts.
- j. Evidences full control of its organization.
- k. Shows tie-in between project and its own long-range plans.
- 1. Outline type of management to be provided.
- m. Shows position of the program manager in his company.
- n. Clarifies program manager's limits of authority.
- o. Delineates appropriate numbers and types of management personnel.
- p. Provides organizational charts when needed.
- q. Furnishes information on its controls for corrective action.
- r. Explains methods of manpower acquisition.
- s. Presents a total manpower plan.
- t. Presents individual plans for major project segments.
- u. Provides a Make-or-Buy Program where applicable.
- v. Gives evidence regarding capabilities of sub-contractor.

3.5 Quality Assurance, Quality Control and Reliability

The term "Quality Assurance" covers all the actions necessary to adequately determine that product requirements are met. "Quality Control" is the system and management function by which the contractor ascertains and controls the quality of supplies or services. "Realiability" is the ability of an item to function without failure. The proposal should carefully delineate the company's programs in these areas. The proposal should:

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- a. Describe the company's quality control plan including:
 - 1. Organization
 - 2. Policies
 - 3. Facilities
 - 4. Operational system
 - 5. Technical capabilities
 - 6. Records system
- b. Clarify that the project's quality control needs can be met.
- c. Explain satisfactorily any deviations from specifications.
- d. Show that the customer reliability needs can be met.
- e. Indicate clear reliability monitoring points for State checks.
- f. Show an understanding of reliability prediction techniques.
- g. Spell out in detail how predicted goals will be met.
- h. Discuss the company's facilities and measuring techniques.

3.6 <u>Technical Ability (Related Experience and Personnel Resumes)</u>

This section should clearly demonstrate the overall technical competence of the company to complete successfully the specific project involved.

The proposal should provide:

- a. Assurance of specific technical competence.
- b. Examples of similar projects successfully completed.
- c. Information concerning the company's related projects, indicating:
 - 1. Name of customer.
 - 2. Type of project.
 - 3. Funds expended.
- d. Biographies pertinent to project needs.
- e. Availability of full and part-time people, expressed in man-hours.
- f. Assurance of a depth of qualified personnel.

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- q. Methods of compensating for the company's technical weaknesses.
- h. Details of adequate technical facilities available for:
 - 1. Research and development, testing and production.
 - 2. Plan showing layout, dollar value and square footage.
- i. Oetails concerning required special facilities or equipment.
- j. Assurance that facilities will be available when needed.
- k. Justification for use of Government-furnished equipment.
- 1. Assurance of subcontractors timely availability.

3.7 Price

The State of Maryland should qualify for the lowest possible price. In evaluating bids, the long-range potential versus immediate return must be considered, as well as the probable competitive price range. The following factors are also to be considered:

- a. Clarification of all "Make-or-Buy" aspects.
- b. Satisfaction that the lowest realistic cost estimates were submitted.
- c. Certainty that no cost factors have been over-estimated.
- d. Reasonability of overhead and burden rates and fees.
- e. Consistency of pricing detail with the importance of these details.

3.8 Editing and Format

Usually no arithmetic rating is assigned to the editorial caliber and format of the proposal; however, their importance cannot be over—emphasized. The information required by the proposal request must be presented in a logical, pleasing manner that gives the required emphasis. The proposal should:

- a. Exhibit clarity, logic of presentation and consistency.
- b. Show completeness, accuracy and proper emphasis.

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- c. Follow the organization of subject matter in the RFP.
- d. Lack unessential, trivial, repetitive material.
- e. Read easily, with logical paragraphs, headers and dividers.
- f. Confine abbreviations to standard words.
- g. Use consistent page and figure numberings.
- h. Provide a Table of Contents and Index appropriate to its size.
- i. Include non-technical synopsis of various sections.
- j. Contain illustrations which are functional and aid readability.

3.9 Training and Education

No equipment or software purchased will be of significant value to the State unless adequate personnel are experienced in the techniques of operation or design.

The proposal must clearly state the amount of training or education required of State personnel and provide a schedule of available courses which will be furnished.

EXHIBIT

BILL NO. 1

Source: Current Budget Bureau

Procedure Codified

A BILL ENTITLED

AN ACT concerning

Automatic Data Processing Goods and Services Acquisition

FDR the purpose of establishing requirements for review and approval of intended acquisition of automatic data processing goods and services before an agency awards a contract.

By repealing and reenacting, with amendments,

Article 15A - Department of Budget and Fiscal Planning Section 23B Annotated Code of Maryland (1976 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY DF MARYLAND, That Section 23B of Article 15A - Department of Budget and Fiscal Planning, of the Annotated Code of Maryland (1976 Replacement Volume) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article 15A - Oepartment of Budget and Fiscal Planning

23B. Data Processing

- (a) The Secretary, after consultation with the State Comptroller shall be responsible for planning and controlling data processing in the several departments and agencies of State government. The Secretary shall continuously study the data processing function within the State in order to improve its efficiency and economy. All changes effected by any department or agency pertaining to data processing shall first be reviewed and approved by the Secretary for compatibility with existing procedures and equipment.
- (b) The purchase, lease, or rental of mechanical or electronic data processing equipment for all State departments and agencies shall be reviewed and approved by the Secretary prior to the purchase, lease or rental[.] AS PRDVIDED FDR HEREIN:
- (1) THIS SECTION APPLIES TO ALL AGENCIES, OEPARTMENTS, BDARDS, CDMMISSIONS OR INSTITUTIONS OF THE STATE, INCLUDING THE LEGISLATURE, JUDICIARY AND THE UNIVERSITY OF MARYLAND, THAT PURCHASE OR LEASE CONTRACTUAL SERVICES, AUTOMATIC OATA PROCESSING EQUIPMENT AND DTHER GDDDS AND SERVICES DIRECTEO BY STATUTE, THE GOVERNOR OR THE BOARD OF PUBLIC WORKS TO BE UNDER THE CONTROL OF THE DEPARTMENT OF BUOGET AND FISCAL PLANNING. THIS SECTION DOES NOT APPLY TO:

CONTRACTS FOR DESIGN, ACQUISITION, CONSTRUCTION AND DTHER CAPITAL EXPENDITURES WHICH REQUIRE APPROVAL BY THE BDARD OF PUBLIC WDRKS AND CERTAIN REPAIR AND MAINTENANCE CONTRACTS WHICH BY LAW MUST BE APPROVED BY THE DEPARTMENT OF GENERAL SERVICES.

SUPPLIES, EQUIPMENT AND DTHER GDDDS PURCHASED IN ACCORDANCE WITH DEPARTMENT DF GENERAL SERVICES' REGULATIONS.

CONTRACTS WHICH OO NOT EXCEEO \$2,500 IN TOTAL PAYMENT OURING ONE FISCAL YEAR AND ARE SUPPORTED BY A LINE ITEM IN THE ANNUAL STATE BUDGET. "LINE ITEM" FOR THIS PURPDSE MEANS SUB-OBJECT DETAIL IN THE AGENCY'S BUOGET SUBMISSION, CONSISTENT WITH THE BUOGET AS ENACTED, WHICH REASON-ABLY IDENTIFIES THE TYPE OF SERVICE. HOWEVER, CONTRACTS EXEMPTED UNDER THIS SECTION MUST BE IN WRITING, MUST CONTAIN THE CLAUSES LISTED IN III.C.2 UNLESS CLEARLY INAPPLICABLE, MUST BE KEPT ON FILE BY THE AGENCY FOR AUDIT PURPOSES, AND A COPY FURNISHED TO THE DEPARTMENT OF BUOGET AND FISCAL PLANNING.

STUDENTS EMPLOYED ON A PART-TIME BASIS IN STATE COLLEGES AND INSTITUTIONS.

PATIENTS WORKING IN THE STATE HEALTH INSTITUTIONS, SUBJECT TO BUOGETARILY APPROVED FUND SOURCE.

- (2) ALL REQUESTS FOR PROPOSAL (RFP) AND CONTRACTUAL SERVICES INVOLVING DATA PROCESSING SERVICES OR RESDURCES SHALL BE SUBMITTED IN ACCORDANCE
 WITH THE GUIDELINES IN THE "STATE OF MARYLAND DATA PROCESSING STANDARDS MANUAL"
 WHICH SETS FORTH CERTAIN OOCUMENTATION AND OTHER REQUIREMENTS THAT MUST BE
 COMPLETED BY THE AGENCY. AN AGENCY IN OOUBT AS TO THE APPLICATION OF THIS
 STATUTE OR THAT IS FACED WITH AN EMERGENCY SITUATION SHOULD SEEK THE ADVICE
 OF THE DEPARTMENT OF BUOGET AND FISCAL PLANNING BEFORE CONTRACTING.
- (3) THE AGENCY SHALL USE THE FORM PRESCRIBEO BY THE OEPARTMENT OF BUOGET AND FISCAL PLANNING. THIS FORM SHALL BE PREPARED WHEN: THE AGENCY SUBMITS A FORMAL REQUEST FOR A BIO PROPOSAL (RFP) FOR CONTRACTUAL GOODS OR SERVICES TO THE OEPARTMENT OF BUOGET AND FISCAL PLANNING FOR ITS REVIEW AND COMMENT; AND THE AGENCY SUBMITS THE CONTRACT TO THE DEPARTMENT OF BUOGET AND FISCAL PLANNING FOR ITS APPROVAL. REFERENCE TO THE HEAD OF THE AGENCY IN THESE REGULATIONS AND APPENDICES INCLUDES A PERSON OR PERSONS DESIGNATED BY THE AGENCY HEAD TO PERFORM CONTRACT FUNCTIONS. THE AGENCY SHALL KEEP THE DEPARTMENT OF BUOGET AND FISCAL PLANNING INFORMED IN WRITING OF THE IDENTITY OF ALL SUCH DESIGNEES.
- (4) ANO RFP SHALL BE PREPAREO BY AN AGENCY INTENDING TO CONTRACT FOR GOODS AND SERVICES: WHEN DIRECTED BY STATUTE, EXECUTIVE ORDER OR BOARD OF PUBLIC WORKS ACTION; AND IN ALL OTHER CASES, UNLESS THE AGENCY DETERMINES THAT SOLICITATION OF COMPETING BIOS OR PROPOSALS IS CONTRARY TO ESTABLISHED PRACTICE IN THE FIELD OR IS INCONSISTENT WITH THE PURPOSE OF THE CONTRACT, OR THAT INFORMAL SOLICITATION OF COMPETING BIOS OR PROPOSALS IS CUSTOMARY AND WILL AFFORD DEFINITE COST AOVANTAGES TO THE AGENCY, COMPARED TO USE OF AN RFP. ALL AGENCIES ARE RESPONSIBLE IN ALL CASES FOR OBTAINING THE BEST PRICE CONSISTENT WITH THE OBJECTIVES OF THE CONTRACT. THIS RESPONSIBILITY WILL BE MONITORED BY THE DEPARTMENT OF BUGGET AND FISCAL PLANNING AT THE REVIEW AND COMMENT STAGE WHEN AN RFP IS USED, AT THE CONTRACT APPROVAL STAGE FOR ALL CONTRACTS SUBJECT TO THESE REGULATIONS, AND AT THE POST-AUDIT STAGE GENERALLY. ALL AGENCIES ARE RESPONSIBLE IN ALL CASES FOR OBTAINING APPROVAL OF THE DEPARTMENT OF BUGGET AND FISCAL PLANNING PRIOR TO AWARD OF CONTRACT SUBJECT TO THESE REGULATIONS.
- (5) WHEN AN AGENCY INTENOS TO ENTER INTO A CONTRACT WITHOUT USE OF AN RFP, THAT FACT SHALL BE DISCLOSED ON FORMS PRESCRIBED BY THE DEPARTMENT OF BUOGET AND FISCAL PLANNING AT THE TIME THE CONTRACT IS SUBMITTED TO THE DEPARTMENT OF BUOGET AND FISCAL PLANNING FOR APPROVAL. THE FORM SHALL INCLUDE A FULL EXPLANATION OF THE PROCEDURE ACTUALLY FOLLOWED FOR CONTRACTOR SELECTION, AND HOW COMPETITIVE BIOS OR PROPOSALS WERE SOLICITED, OR WHY THEY WERE NOT SOLICITED. THE FORM SHALL HAVE ATTACHED ALL DOCUMENTATION OF THE PROCEDURE FOLLOWED.

- (6) WHEN AN AGENCY INTENDS TO PREPARE AN RFP AND SUBSEQUENTLY TD ENTER INTO A CONTRACT ON THE BASIS OF RESPONSES TO THE RFP, A COPY OF THE RFP FOR CONTRACTUAL GOODS OR SERVICES MUST BE SUBMITTED TOGETHER WITH COMPLETED FORM TO THE DEPARTMENT OF BUDGET AND FISCAL PLANNING PRIDR TO THE SDLICITATION FOR BIDS. EXCEPT FOR EMERGENCIES THE RFP, WHERE EMPLOYED, SHALL BE SUBMITTED FOR REVIEW TO THE DEPARTMENT OF BUDGET AND FISCAL PLANNING AT LEAST TEN WORKING DAYS PRIDR TD IMPLEMENTATION. THE DEPARTMENT OF BUDGET AND FISCAL PLANNING WILL REVIEW AND COMMENT ON THE AGENCY'S RFP, NDRMALLY WITHIN FIVE WDRKING DAYS AFTER RECEIPT. THE AGENCY SHALL ACKNOWLEDGE AND IS EXPECTED TO COMPLY WITH THE COMMENTS OF THE DEPARTMENT OF BUDGET AND FISCAL PLANNING, WHILE RESERVING ITS AUTHORITY DVER MATTERS OF SUBSTANTIVE POLICY. FAILURE OF THE DEPARTMENT OF BUDGET AND FISCAL PLANNING TO COMMENT ADVERSELY DR TD COMMENT AT ALL DN AN RFP DOES NDT NECESSARILY IMPLY APPROVAL BY THE DEPARTMENT OF BUDGET AND FISCAL PLANNING. HOWEVER, THE DEPARTMENT OF BUDGET AND FISCAL PLANNING WILL ATTEMPT TO ANTICIPATE IN ITS REVIEW AND COMMENTS AT THE RFP STAGE, ANY POTENTIAL PROBLEMS AT THE CONTRACT STAGE. AFTER AN AGENCY RECEIVES AND HAS RESDLVED ANY COMMENTS OF THE DEPARTMENT OF BUDGET AND FISCAL PLANNING, OF IF THE DEPARTMENT OF BUDGET AND FISCAL PLANNING DDES NOT CDMMENT ON THE RFP WITHIN TEN WORKING DAYS AFTER RECEIPT, IT MAY PROCEED TO SDLICIT PROPDSALS FOR CONTRACTUAL GOODS AND SERVICES, EVALUATE THE BIO PROPDSALS AND RECOMMEND THE MOST ADVANTAGEOUS BID PROPOSALS TO THE DEPARTMENT OF BUDGET AND FISCAL PLANNING. AN AGENCY'S RFP DR COMMUNICATION IN THE NATURE DF AN RFP TD PDTENTIAL CONTRACTORS MUST INCLUDE THE SPECIFIC PROVISION THAT THE STATE RESERVES THE RIGHT TO REJECT ANY DR ALL PROPOSALS WITHOUT COST DR DETRIMENT TO THE STATE. THE RFP SHALL REQUIRE CERTIFICATION BY CORPORATE BIDDERS OF CORPORA-TIDN REGISTRATION AND TAX PAYMENT WITH THE MARYLAND STATE DEPARTMENT OF ASSESS-MENTS AND TAXATION. AN AGENCY MUST GIVE ALL PERTINENT INFORMATION AND EQUAL TREATMENT TO ALL PROSPECTIVE CONTRACTORS AS TO THE AGENCY'S CONTRACTUAL REQUIRE-MENTS.
- (7) COPIES DF ALL BID PROPDSALS FOR CONTRACTUAL GDDDS DR SERVICES, WHERE UTILIZED, TDGETHER WITH CDPIES DF THE PROPDSED CONTRACT AND THE COMPLETED DEPARTMENT OF BUDGET AND FISCAL PLANNING. THE DEPARTMENT OF BUDGET AND FISCAL PLANNING. THE DEPARTMENT OF BUDGET AND FISCAL PLANNING WILL REVIEW AND APPROVE OR DISAPPROVE THE RECOMMENDED CONTRACT AS SOON AS FEASIBLE, AND NOT MORE THAN TEN DAYS AFTER RECEIPT. THE AGENCY WILL BE ADVISED OR REWARDED, OR CORRECTED TO BLIMINATE THE DBJECTIONS, DR AN IN-HOUSE ALTERNATIVE METHOD DEVISED TO ACCOMPLISH THE PURPOSE OF THE CONTRACT, AS THE CASE MAY BE. APPROVAL FROM THE DEPARTMENT OF BUOGET AND FISCAL PLANNING ALLOWS THE AGENCY TO IMPLEMENT THE CONTRACT. CONTRACTS MUST BE WRITTEN AND MUST CONTAIN, AS A MINIMUM, THE FOLLOWING:

SPECIFIC PURPOSE OF THE CONTRACT, AND A SCOPE OF SERVICES ADEQUATE TO INFORM NOT DNLY THE CONTRACTOR, BUT ALSO ANY THIRO PERSON WITHOUT SPECIAL KNOWLEDGE OF THE BACKGROUND OF THE CONTRACT, EXACTLY WHAT THE CONTRACTOR IS EXPECTED TO ACCOMPLISH.

THE PERIOD COVERED BY THE CONTRACT, AND DEFINITE COMPLETION DATES FOR THE TOTAL SERVICES AND FOR EACH INTERMEDIATE STAGE OR PHASE OF THE CONTRACT WHICH IS SPECIFIED IN THE SCOPE OF SERVICES.

PARTIES TO THE CONTRACT (TITLE AND DRGANIZATION) INCLUDING CORRECT LEGAL IDENTITY AS CORPORATION, PARTNERSHIP, DR INDIVIDUAL.

DETERMINATION OF PAYMENT (FIXED PRICE UPON COMPLETION; PERIODIC IN-VOICING; RATE CALCULATION; IN-KIND ETC.)

WHD FURNISHES MATERIALS, EQUIPMENT AND SUPPLIES (CONTRACTOR, STATE DR OTHER PARTIES).

TERMINATION CLAUSES.

A STATEMENT AS TO WHETHER THE CONTRACTOR OR THE STATE WILL WITHHOLD TAXES AND SOCIAL SECURITY.

A STATEMENT THAT THE CONTRACTOR WILL COMPLY WITH ANY AND ALL LAWS AS THEY RELATE TO EMPLOYEES.

AGREEMENT BY THE CONTRACTOR NOT TO DISCRIMINATE IN EMPLOYMENT AND SUBCONTRACTING DN THE BASIS DF RACE, NATIONAL DRIGIN, RELIGIDN, SEX, MARITAL STATUS, AGE OR PHYSICAL OR MENTAL HANDICAP NOT PREVENTING THE INDIVIDUAL FROM PERFORMING THE WORK.

CERTIFICATION THAT THE CONTRACTOR, IF A CORPORATION, HAS COMPLIED WITH THE STATE'S STATUTORY REGISTRATION, QUALIFICATION, RECORDING AND FILING REQUIREMENTS, AND IS NOT DELINQUENT IN TAXES.

THE CONTRACTOR'S WARRANTY OF THE WORK OR QUALITY OF SERVICES TD BE PERFORMED UNDER THE CONTRACT.

A STATEMENT THAT THE CONTRACTOR WILL MAINTAIN AND RETAIN ALL RECORDS AND DOCUMENTS RELATING TO THE PERFORMANCE OF THE CONTRACT FOR A PERIOD OF THREE YEARS AFTER COMPLETION OF THE CONTRACTUAL SERVICES AND WILL MAKE SUCH RECORDS AVAILABLE FOR AUDIT AND INSPECTION BY AUTHORIZEO STATE REPRESENTATIVES.

A PROCEOURE FOR POSITIVE TIME REPORTING BY ALL CONTRACTORS WHOSE COMPENSATION DEPENDS WHOLLY OR PARTLY DN TIME WDRKED.

DESIGNATION, BY NAME AND TITLE OR POSITION WITH THE AGENCY, OF A CONTRACT MONITOR, WHO SHALL BE PERSONALLY FAMILIAR WITH PROGRESS OF THE CONTRACT THROUGHOUT ITS DURATION AND TO WHOM PROBLEMS OR DISPUTES ARISING UNDER THE CONTRACT SHALL BE REFERRED FIRST.

PROVISION FOR REIMBURSEMENT OF EXPENSES, IF APPLICABLE AND IF INTENDED TO BE IN ADDITION TO COMPENSATION FOR SERVICES. REIMBURSEMENT SHALL NOT BE MORE LIBERAL THAN CORRESPONDING STANDARD STATE TRAVEL REGULATIONS.

(8) ALL CONTRACTS MUST BE SIGNED BY THE HEAD OF THE REQUESTING AGENCY OR HIS AUTHORIZED REPRESENTATIVE AND BY THE CONTRACTOR AND WITNESSED. THE AGENCY WILL NOT SIGN THE CONTRACT UNTIL AFTER IT IS RETURNED APPROVED FROM THE DEPARTMENT OF BUDGET AND FISCAL PLANNING.

THE PROPOSED CONTRACTOR MUST BE CLEARLY ADVISED BY THE AGENCY THAT THE CONTRACT IS NOT BINDING UNTIL APPROVAL BY THE DEPARTMENT OF BUDGET AND FISCAL PLANNING AND SIGNATURE BY THE AGENCY.

ALL AGENCIES ARE STRONGLY ENCOURAGED TO DEVISE A STANDARD FORM OF CONTRACT, CONTAINING THOSE CLAUSES WHICH ARE THE SAME IN ALL OR MOST CONTRACTS, AND PERMITTING INSERTION OF THE MATTER WHICH IS DIFFERENT FOR EACH CONTRACT.

THE CONTRACTOR AND THE HEAD OF THE AGENCY MUST ALSO COMPLETE THE APPROPRIATE CERTIFICATIONS.

CONTRACTS EXTENDING BEYOND THE CURRENT FISCAL YEAR AND REQUIRING THE EXPENDITURE OF FUNDS OF THE ENSUING FISCAL YEAR, SHALL STATE THAT SUCH EXTENSION IS SUBJECT TO BUDGETARY AVAILABILITY DF THE FUNDS TO SUPPORT THE CONTRACT.

EXAMPLE: "NOTWITHSTANDING THE TERMINATION DATE OF MAY 15, 1980
IN PARAGRAPH, THE DEPARTMENT MAY TERMINATE THIS
CONTRACT, WITHOUT LIABILITY, AS DF JUNE 3D, 1979, IF
FOR ANY REASON THERE ARE ND FUNDS APPROPRIATED FOR
THIS CONTRACT IN THE BUDGET FOR THE FISCAL YEAR ENDING
JUNE 3D, 1980."

CONTRACTS MUST BE APPROVED AND SIGNED IN ADVANCE BY THE ATTORNEY GENERAL OR A DEPUTY OR ASSISTANT ATTORNEY GENERAL, AS TO FORM AND LEGAL SUFFICIENCY. APPROVAL OR RETURN FOR RESOLUTION OF LEGAL QUESTIONS WILL BE DONE WITHIN TWO WORKING DAYS.

THE OEPARTMENT OF BUDGET AND FISCAL PLANNING WILL ESTABLISH A CONTROL SYSTEM AND ASSIGN A CONTROL NUMBER TO EACH APPROVED CONTRACT AND SUCH CONTROL NUMBER MUST BE RECORDED BY THE AGENCY ON TRANSMITTALS AND SPECIAL PAYMENT PAYROLLS WHEN SUBMITTED FOR PAYMENT.

WHERE A CONTRACT CONTAINS A PROVISION REQUIRING A CONTRACTOR TO SUBMIT A FINAL REPORT TO THE AGENCY, A COPY OF SUCH REPORT WILL BE SUBMITTED BY THE AGENCY TO THE DEPARTMENT OF BUDGET AND FISCAL PLANNING.

AN AGENCY MAY COMMIT ITSELF TO A CONTRACT FDR GOODS OR SERVICES WITHOUT PRIOR OEPARTMENT OF BUOGET AND FISCAL PLANNING APPROVAL, ONLY WHERE ABSOLUTELY NECESSARY FOR THE PROTECTION OF HEALTH, SAFETY, OR PROPERTY. AS SOON AS POSSIBLE AFTER ENTERING INTO SUCH A CONTRACT, THE AGENCY SHALL SUBMIT THE CONTRACT TOGETHER WITH THE APPROPRIATE FORM TO THE DEPARTMENT OF BUOGET AND FISCAL PLANNING, INCLUDING AN EXPLANATION OF THE EMERGENCY.

(9) A CONCISE AND WELL-FORMULATED STATEMENT FROM THE REQUESTING AGENCY AS TO THE REASON FOR THE PROPOSED CONTRACT IS REQUIRED. THIS STATEMENT WILL BE FURNISHED ON OR AS AN ATTACHMENT TO THE APPROPRIATE FORM WHEN REVIEW AND COMMENT IS SOUGHT ON THE RFP, WHEN AN RFP IS USED. IF AN RFP IS NOT USED, THIS STATEMENT WILL BE FURNISHED ON OR AS AN ATTACHMENT TO THE FORM WHEN CONTRACT APPROVAL IS SOUGHT. CONTRACT APPROVAL WILL BE BASED ON THE DEPARTMENT OF BUDGET AND FISCAL PLANNING'S OWN ANALYSIS AND INVESTIGATION OF THE BUDGETARY AND PROCEDURAL ASPECTS OF THE CONTRACT, AND OF ITS OVERALL ADVANTAGE OR DISADVANTAGE TO THE STATE, WITHDUT INFRINGEMENT OF THE AGENCY'S AUTHDRITY IN MATTERS OF POLICY, AND WITHOUT RELINQUISHMENT OF THE DEPARTMENT OF BUDGET AND FISCAL PLANNING'S OVERSIGHT AS TO DRDERLY, FAIR, AND ECONOMICAL PRACTICES.

THE AGENCY MUST CERTIFY TO THE OPPARTMENT OF BUOGET AND FISCAL PLANNING THAT THERE IS CURRENTLY AVAILABLE IN THE AGENCY'S BUDGET SUFFICIENT FUNDS FOR ANY PROPOSEO CONTRACT.

CONTRACTS SHALL BE DRAFTEO ON THE BASIS OF A "FIXED" OR "NDT TD EXCEED" COMPENSATION.

PAYMENTS SHALL NOT BE ADVANCEO, BY THE STATE, BEYOND WDRK ACTUALLY CDMPLETED, UNLESS SO PROVIDED UNDER THE TERMS OF THE CONTRACT.

THE AGENCY SHALL INFORM THE COMPTROLLER'S OFFICE WHERE A CONTRACTOR, NOT REGULARLY ENGAGEO IN BUSINESS IN MARYLAND, EMPLOYS PERSONS IN MARYLAND TO FULFILL ITS CONTRACT, AND IN ALL CASES WHERE A CONTRACTOR IS KNOWN TO BE IN FINANCIAL DIFFICULTY, SO THAT THE COMPTROLLER CAN VERIFY PAYMENT DF WITHHOLDING TAXES, PRIOR TO FINAL CONTRACT PAYMENT.

SECTION 2. ANO BE IT FURTHER ENACTEO, That all laws or parts of laws, public general or public local, inconsistent with this Act, are repealed to the extent of the inconsistency.

SECTION 3. ANO BE IT FURTHER ENACTEO, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application, and to this end all the provisions of this Act are declared to be severable.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect on July 1, 1977.

EXHIBIT C

BILL NO. 2

Source: Architects &

Engineers Subtitle with Modifications

A BILL ENTITLED

AN ACT concerning

Automatic Data Processing Equipment and Service Acquisitions

FOR the purpose of requiring the Department of Budget and Fiscal Planning to provide technical specifications for the acquisition of automatic data processing equipment, services, software and other materials to the Department of General Services; charging the Department of General Services with the responsibility for ADP acquisition and contract administration; requiring the use of competitive bidding on commodities/services greater than \$25,000; and generally concerning the acquisition of data processing material, equipment and consulting services.

BY repealing and reenacting, with amendments,

Article 15A - Department of Budget and Fiscal Planning Section 23 B Annotated Code of Maryland (1976 Replacement Volume)

BY repealing and reenacting, with amendments.

Article 41 - Executive and Administrative Departments Section 321 G(a) Annotated Code of Maryland (1971 Replacement Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 23B of Article 15A - Department of Budget and Fiscal Planning, of the Annotated Code of Maryland (1976 Replacement Volume) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article 15A - Department of Budget and Fiscal Planning

23B.

The Secretary, after consultation with the State Comptroller shall be responsible for planning and controlling data processing in the several departments and agencies of the State government. The Secretary shall continuously study the data processing function within the State in order to improve its efficiency and economy. All changes effected by any department or agency pertaining to data processing shall first be reviewed and approved by the Secretary for compatibility with existing procedures and equipment. The purchase, lease, or rental of mechanical or electronic data processing equipment for all State departments and agencies shall be reviewed and approved by the Secretary prior to the purchase, lease, or rental. AFTER APPROVAL BY THE SECRETARY, THE DEPARTMENT WILL TRANSMIT THE TECHNICAL SPECIFICATIONS TO THE DEPARTMENT OF GENERAL SERVICES FOR PREPARATION AND DISSEMINATION OF A COMPETITIVE BID SOLICITATION TO VARIOUS SUPPLIERS. ACQUISITION AND CONTRACT ADMINISTRATION WILL BE THE RESPONSIBILITY OF THE DEPARTMENT OF GENERAL SERVICES.

BILL NO. 2 - Page two

SECTION 2. BE IT FURTHER ENACTEO, That Section 231G(a) of Article 41 - Executive and Administrative Oepartments, of the Annotated Code of Maryland (1971 Replacement Volume and 1976 Supplement) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article 41 - Executive and Administrative Oepartments

231G(a)

Every department, board, commission, bureau, division, institution and agency of this State, hereinafter called the using authorities, shall purchase all materials, supplies and equipment, through or with the approval of the Secretary of General Services. WITH THE CONSULTATION OF THE SECRETARY OF BUOGET AND FISCAL PLANNING, THE OEPARTMENT SHALL PREPARE AND DISTRIBUTE BIO PACKAGES TO VARIOUS SUPPLIERS AND BE RESPONSIBLE FOR AOP ACQUISITION AND CONTRACT AOMINISTRATION FOR ALL STATE AGENCIES. ALL PROCUREMENTS AND AWARD OF CONTRACTS, CONSULTANT AGREEMENTS, OR OTHER OBLIGATIONS FOR AOP EQUIPMENT (INCLUDING PERIPHERALS), SOFTWARE, SERVICES AND OTHER MATERIALS WITH A VALUE IN EXCESS OF \$25,000 SHALL BE AWARDED ON A COMPETITIVE BASIS AND SHALL INCLUDE EVALUATIONS OF BOTH TECHNICAL AND PRICE PROPOSALS FROM TWO OR MORE FIRMS UNLESS THE DEPARTMENT OETERMINES IN WRITING THAT THE PARAPHENALIA OR SERVICES CANNOT BE SO COMPLETELY DEFINED AS TO LEND THEMSELVES TO THAT PROCEDURE. IN MAKING THE AWARD ON A COMPETITIVE BASIS, NEITHER THE PRICE PROPOSAL NOR THE TECHNICAL PROPOSAL SHALL BE THE SOLE CRITERION.

SECTION 3. AND BE IT FURTHER ENACTED, That all laws or parts of laws, public general or public local, inconsistent with this Act, are repealed to the extent of the Inconsistency.

SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application, and to this end all the provisions of this Act are declared to be severable.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect on July 1, 1977.

EXHIBIT D

BILL NO. 3

Source: Current California
Statute

A BILL ENTITLED

AN ACT concerning

Automatic Data Processing Equipment and Service Acquisitions - Competitive Bidding

FOR the purpose of requiring the use of competitive bidding on all contracts for the acquisition or rental of automatic data processing equipment, personal services or supplies.

BY repealing and reenacting, with amendments,

Article 15A - Department of Budget and Fiscal Planning Section 23B Annotated Code of Maryland (1976 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 23B of Article 15A - Department of Budget and Fiscal Planning, of the Annotated Code of Maryland (1976 Replacement Volume) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article 15A - Department of Budget and Fiscal Planning

23B.

The Secretary, after consultation with the State Comptroller shall be responsible for planning and controlling data processing in the several departments and agencies of the State government. The Secretary shall continuously study the data processing function within the State in order to improve its efficiency and economy. All changes effected by any department or agency pertaining to data processing shall first be reviewed and approved by the Secretary for compatibility with existing procedures and equipment. The purchase, lease, or rental of mechanical or electronic data processing equipment for all State departments and agencies shall be reviewed and approved by the Secretary prior to the purchase, lease, or rental. ND APPROPRIATIONS OR FUNDS DBTAINED FROM ANY OTHER SOURCE, MAY BE EXPENDED BY ANY STATE AGENCY (INCLUDING THE LEGISLATIVE, JUDICIAL AND EXECUTIVE BRANCHES, AND THE UNIVERSITY OF MARYLAND) PURSUANT TO A CONTRACT FOR EXPANSION, IMPROVEMENT OR ADDITION TO AUTOMATIC DATA PROCESSING ACTIVITIES, PERSONNEL, EQUIPMENT, FACILITIES, OR SUPPLIES, UNLESS THE CONTRACT FOR THE ACQUISITION OR RENTAL OF EQUIPMENT, PERSONAL SERVICES, OR SUPPLIES IS COMPETITIVELY BID.

SECTION 2. AND BE IT FURTHER ENACTED, That all laws or parts of laws, public general or public local, inconsistent with this Act , are repealed to the extent of the inconsistency.

SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application, and to this end all the provisions of this Act are declared to be severable.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect on July 1, 1977.

EXHIBIT E

BILL ND. 4

Source: Federal Brooks Act of 1965 (PL 89-306)

A BILL ENTITLED

AN ACT concerning

Automatic Data Processing Equipment - Acquisition

FOR the purpose of authorizing the Department of Budget and Fiscal Planning to coordinate and provide for the purchase, lease and maintenance of equipment by State agencies; and providing for procurement, maintenance, operation and utilization of automatic data processing equipment.

By repealing and reenacting, with amendments,

Article 15A - Department of Budget and Fiscal Planning Section 23B Annotated Code of Maryland (1976 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY DF MARYLAND, That Section 23B of Article 15A - Departmentof Budget and Fiscal Planning, of the Annotated Code of Maryland (1976 Replacement Volume) be and it is hereby repealed and reenacted, with amendments, to read as follows:

Article 15A - Department of Budget and Fiscal Planning

23B.

- (a) The Secretary, after consultation with the State Comptroller shall be responsible for planning and controlling data processing in the several departments and agencies of the State government. The Secretary shall continuously study the data processing function within the State in order to improve its efficiency and economy. All changes effected by any department or agency pertaining to data processing shall first be reviewed and approved by the Secretary for compatibility with existing procedures and equipment. [The purchase, lease, or rental of mechanical or electronic data processing equipment for all State Departments and agencies shall be reviewed and apporved by the Secretary prior to the purchase, lease, or rental.]
- (b) THE SECRETARY IS AUTHORIZED AND DIRECTED TO CODRDINATE AND PROVIDE FOR THE ECONOMIC AND EFFICIENT PURCHASE, LEASE, AND MAINTENANCE OF AUTOMATIC DATA PROCESSING EQUIPMENT BY STATE AGENCIES.

AUTDMATIC DATA PRDCESSING EQUIPMENT SUITABLE FOR EFFICIENT AND EFFECTIVE USE BY STATE AGENCIES SHALL BE PROVIDED BY THE SECRETARY THROUGH PURCHASE, LEASE, TRANSFER OF EQUIPMENT FROM OTHER STATE AGENCIES, DR OTHERWISE, AND THE SECRETARY IS AUTHORIZED AND DIRECTED TO PROVIDE BY CONTRACT OR OTHERWISE FOR THE MAINTENANCE AND REPAIR OF SUCH EQUIPMENT. IN CARRYING OUT HIS RESPONSIBILITIES UNDER THIS SECTION THE SECRETARY IS AUTHORIZED TO TRANSFER AUTDMATIC DATA PROCESSING EQUIPMENT BETWEEN STATE AGENCIES, TD PROVIDE FOR JDINT UTILIZATION OF SUCH EQUIPMENT BY TWO DR MDRE STATE AGENCIES, AND TD ESTABLISH AND DPERATE EQUIPMENT PDDLS AND DATA PROCESSING CENTERS FOR THE USE DF TWO OR MORE SUCH AGENCIES WHEN NECESSARY FOR ITS MOST EFFICIENT AND EFFECTIVE UTILIZATION.

THE SECRETARY MAY OELEGATE TO ONE OR MORE STATE AGENCIES AUTHORITY TO OPERATE AUTOMATIC OATA PROCESSING EQUIPMENT POOLS AND AUTOMATIC DATA PROCESSING CENTERS, AND TO LEASE, PURCHASE, OR MAINTAIN INDIVIDUAL AUTOMATIC DATA PROCESSING SYSTEMS DR SPECIFIC UNITS OF EQUIPMENT, INCLUDING SUCH EQUIPMENT USED IN AUTOMATIC DATA PROCESSING POOLS AND AUTOMATIC OATA PROCESSING CENTERS, WHEN SUCH ACTION IS DETERMINED BY THE SECRETARY: TO BE NECESSARY FOR THE ECONOMY AND EFFICIENCY OF OPERATIONS, OR WHEN SUCH ACTION IS ESSENTIAL FOR THE PROTECTION OF HEALTH, SAFETY OR PROPERTY. THE SECRETARY MAY OELEGATE TO ONE OR MORE STATE AGENCIES AUTHORITY TO LEASE, PURCHASE, OR MAINTAIN AUTOMATIC DATA PROCESSING EQUIPMENT TO THE EXTENT TO WHICH HE OETERMINES SUCH ACTION TO BE NECESSARY AND DESIRABLE TO ALLOW FOR THE ORDERLY IMPLEMENTATION OF A PROGRAM FOR THE UTILIZATION OF SUCH EQUIPMENT.

THERE IS HEREBY AUTHORIZED TO BE ESTABLISHED ON THE BOOKS OF THE TREASURY AN AUTOMATIC OATA PROCESSING FUNO, WHICH SHALL BE AVAILABLE WITHOUT FISCAL YEAR LIMITATION FOR EXPENSES, INCLUDING PERSONAL SERVICES, OTHER CDSTS, AND THE PROCUREMENT BY LEASE, PURCHASE, TRANSFER, DR OTHERWISE OF EQUIPMENT, MAINTENANCE, AND REPAIR OF SUCH EQUIPMENT BY CONTRACT OR OTHERWISE, NECESSARY FOR THE EFFICIENT COORDINATION, OPERATION, UTILIZATION OF SUCH EQUIPMENT BY AND FOR STATE AGENCIES: PROVIDED, THAT A REPORT OF EQUIPMENT INVENTORY, UTILIZATION, AND ACQUISITIONS, TOGETHER WITH AN ACCDUNT OF RECEIPTS, DISBURSEMENTS, AND TRANSFERS TO MISCELLANEDUS RECEIPTS, UNDER THIS AUTHORIZATION SHALL BE MADE ANNUALLY IN CONNENTION WITH THE BUOGET ESTIMATES TO THE GOVERNOR AND THE GENERAL ASSEMBY AND THE INCLUSION IN APPROPRIATION ACTS OF PROVISIONS REGULATING THE OPERATION OF THE AUTOMATIC OATA PROCESSING FUNO, OR LIMITING THE EXPENDITURES THEREFROM, IS HEREBY AUTHORIZED.

THERE ARE AUTHORIZED TO BE APPROPRIATED TO SAID FUND SUCH SUMS AS MAY BE REQUIRED WHICH, TOGETHER WITH THE VALUE, AS DETERMINED BY THE SECRETARY OF SUPPLIES AND EQUIPMENT FROM TIME TO TIME TRANSFERRED TO THE SECRETARY SHALL CONSTITUTE THE CAPITAL OF THE FUND: PROVIDED, THAT SAID FUND SHALL BE CREDITED WITH (1) ADVANCES AND REIMBURSEMENTS FROM AVAILABLE APPROPRIATIONS AND FUNDS OF ANY AGENCY (INCLUDING THE OEPARTMENT OF BUDGET AND FISCAL PLANNING), ORGANIZATION, OR CONTRACTOR UTILIZING SUCH EQUIPMENT AND SERVICES RENOERED THEM, AT RATES DETERMINED BY THE SECRETARY TO APPROXIMATE THE COSTS THEREOF MET BY THE FUNO (INCLUDING DEPRECIATION OF EQUIPMENT, PROVISION FOR ACCRUEO LEAVE, AND FOR AMORTIZATION OF INSTALLATION COSTS, BUT EXCLUDING, IN THE OETERMINATION OF RATES PRIOR TO THE FISCAL YEAR 1977, SUCH DIRECT OPERATING EXPENSES MAY BE CHARGEO TO THE FUNO AND COVERED BY ADVANCES OR REIMBURSEMENTS FROM SUCH DIRECT APPROPRIATIONS) AND (2) REFUNOS OR RECOVERIES RESULTING FROM OPERATIONS OF THE FUNO, INCLUDING THE NET PROCEEDS OF DISPOSAL OF EXCESS OR SURPLUS PERSONAL PROPERTY AND RECEIPTS FROM CARRIERS AND OTHERS FOR LOSS OF OR PERSONAL PROPERTY AND RECEIPTS FROM CARRIERS AND DTHERS FOR LDSS DF OR DAMAGE TO PROPERTY: PROVIDED FURTHER, THAT FOLLOWING THE CLOSE OF EACH FISCAL YEAR ANY NET INCOME, AFTER MAKING PROVISIONS FOR PRIOR YEAR LOSSES, IF ANY, SHALL BE TRANSFERRED TO THE TREASURY OF THE STATES AS MISCELLANEOUS RECEIPTS.

THE SECRETARY IS AUTHORIZEO (1) TO PROVICE AGENCIES WITH SCIENTIFIC AND TECHNOLOGICAL ADVISORY SERVICES RELATING TO AUTOMATIC DATA PROCESSING AND RELATED SYSTEMS, AND (2) TO MAKE APPROPRIATE RECOMMENDATIONS TO THE GOVERNOR RELATING TO THE ESTABLISHMENT OF UNIFORM STATE AUTOMATIC DATA PROCESSING STANDARDS. THE SECRETARY IS AUTHORIZED TO UNDERTAKE THE NECESSARY RESEARCH IN THE SCIENCES AND TECHNOLOGIES OF AUTOMATIC DATA PROCESSING COMPUTER AND RELATED SYSTEMS, AS MAY BE REQUIRED UNDER PROVISIONS OF THIS SECTION.

THE AUTHDRITY CONFERRED UPDN THE SECRETARY BY THIS SECTION SHALL BE EXERCISED SUBJECT TO DIRECTION BY THE GOVERNOR AND TO FISCAL AND POLICY CONTROL EXERCISED BY THE DEPARTMENT OF BUOGET AND FISCAL PLANNING. AUTHORITY SO CONFERRED UPON THE SECRETARY SHALL NOT BE SO CONSTRUED AS TO IMPAIR OR INTERFERE WITH THE OETERMINATION BY AGENCIES DF THEIR INDIVIOUAL AUTOMATIC DATA PROCESSING EQUIPMENT REQUIREMENTS, INCLUDING THE DEVELOPMENT OF SPECIFICATIONS FOR AND THE SELECTION DF THE TYPES AND CONFIGURATIONS OF EQUIPMENT NEEDED. THE SECRETARY SHALL NOT INTERFERE WITH, OR ATTEMPT TO CONTROL IN ANY WAY, THE USE MADE OF AUTOMATIC DATA PROCESSING EQUIPMENT OR COMPONENTS THEREOF BY ANY AGENCY. THE SECRETARY SHALL PROVIDE ADEQUATE NOTICE TO ALL AGENCIES AND OTHER USERS CONCERNED WITH RESPECT TO EACH PROPOSED DETERMINATION SPECIFICALLY AFFECTING THEM OR THE AUTOMATIC DATA PROCESSING EQUIPMENT OR COMPONENTS USED BY THEM. IN THE ABSENCE OF MUTUAL AGREEMENT BETWEEN THE SECRETARY AND THE AGENCY OR USER CONCERNED, SUCH PROPOSED DETERMINATIONS SHALL BE SUBJECT TO REVIEW AND DECISION BY THE BOARD OF PUBLIC WORKS.

SECTION 2. AND BE IT FURTHER ENACTEO, That all laws or parts of laws, public general or public local, inconsistent with this Act, are repealed to the extent of the inconsistency.

SECTION 3. ANO BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application, and to this end all the provisions of this Act are declared to be severable.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect on July 1, 1977.

EXHIBIT F

BILL NO. 5

Source: Current Texas Statute

A BILL ENTITLED

AN ACT concerning

Automatic Data Processing for State Agencies

FOR the purpose of providing for the establishment of the Automatic Data Processing Systems Division in the office of the Legislative Auditor; terminating the data processing responsibility of the Department of Budget and Fiscal Planning; describing the duties, responsibilities and authority of the Legislative Auditor and other State agencies with the respect to utilization and acquisition of automatic data processing systems and equipment.

BY repealing

Article 15A - Department of Budget and Fiscal Planning Section 23B Annotated Code of Maryland (1976 Replacement Volume)

BY adding to

Article 40 - General Assembly Section 61B(h) Annotated Code of Maryland (1971 Replacement Volume and 1976 Supplement)

BY adding to

Article 41 - Executive and Administrative Departments Section 231G(f)
Annotated Code of Maryland
(1971 Replacement Volume and 1976 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 23B of Article 15A - Department of Budget and Fiscal Planning, of the Annotated Code of Maryland (1976 Replacement Volume) be and it is hereby repealed:

Article 15A - Department of Budget and Fiscal Planning

23B. 💆 🎍 🤏

[The Secretary, after consultation with the State Comptroller shall be responsible for planning and controlling data processing in the several departments and agencies of the State government. The Secretary shall continuously study the data processing function within the State in order to improve its efficiency and economy. All changes effected by any department or agency pertaining to data processing shall first be reviewed and approved by the Secretary for compatibility with existing procedures and equipment. The purchase, lease, or rental of mechanical or electronic data processing equipment for all State departments and agencies shall be reviewed and approved by the Secretary prior to the purchase, lease, or rental.]

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 61B(h) be and it is hereby added to Article 40 - General Assembly, of the Annotated Code of Maryland (1971 Replacement Volume and 1976 Supplement) to read as follows:

Article 40 - General Assembly

61B. (h)

- (1) THERE SHALL BE ESTABLISHED IN THE OFFICE OF THE LEGISLATIVE AUDITOR AN AUTOMATIC DATA PROCESSING SYSTEMS DIVISION (HEREAFTER REFERRED TO AS THE SYSTEMS DIVISION). FOR THE OPERATION OF THIS DIVISION THE AUDITOR SHALL EMPLOY A SYSTEMS DIRECTOR WITHIN LIMITS OF LEGISLATIVE APPROPRIATIONS. THE AUDITOR SHALL ALSO EMPLOY HIGHLY-QUALIFIED SYSTEMS ANALYSTS, AND SUCH OTHER PERSONNEL AS HE MAY DEEM NECESSARY FOR THE SYSTEMS DIVISION'S SUCCESSFUL OPERATION.
- (2) THE SYSTEMS DIVISION SHALL HAVE AND MAINTAIN COMPREHENSIVE CURRENT INFORMATION RELATING TO ALL AUTOMATIC DATA PROCESSING SYSTEMS, EQUIPMENT, ETC. IT SHALL SERVE IN AN ADVISORY CAPACITY IN THE DETERMINING OF THE ACTUAL NEEDS FOR AND THE FEASIBILITY OF ALL INSTALLATIONS OF AUTOMATIC DATA PROCESSING EQUIPMENT, TO THE END THAT EACH AGENCY SHOULD BE ABLE TO ATTAIN MOST EFFICIENT AND ECONOMICAL OPERATIONS IN ITS SYSTEM OF DATA COLLECTING, PROCESSING, AND STORING.

THE SYSTEMS DIVISION SHALL DEVELOP AND MAINTAIN ORDERLY AND CONTINUING PLANS FOR ENDING UNNECESSARY DUPLICATION, BY AND BETWEEN STATE AGENCIES, OF STAFF AND EQUIPMENT USED FOR DATA COLLECTION, PROCESSING, AND STORAGE. IT SHALL ALSO ADVISE AS TO THE ECONOMIC FEASIBILITY OF THE INSTALLING, EITHER IN AN AGENCY OR BY COOPERATIVE AGREEMENTS BETWEEN AGENCIES, OF AUTOMATIC DATA PROCESSING SERVICES FOR AGENCIES NOT HAVING SUCH INSTALLATIONS, OR HAVING PARTIAL INSTALLATIONS.

- (3) IT SHALL BE THE DUTY OF EACH STATE AGENCY TO COOPERATE FULLY WITH THE SYSTEMS DIVISION TO PROVIDE FULL AND ACCURATE INFORMATION OF CURRENT OR PLANNED USE OF AUTOMATIC DATA PROCESSING EQUIPMENT, SYSTEMS, AND STAFF, AND TO MAKE AVAILABLE ALL OTHER INFORMATION THE DIVISION MAY DEEM NECESSARY FOR COMPLETE AND ACCURATE EVALUATION OF AUTOMATIC DATA PROCESSING BY STATE AGENCIES, FOR THE DEVELOPMENT OF A CONTINUING PLAN, AND FOR THE POSSIBLE EVENTUAL IMPLEMENTATION OF A COMPREHENSIVE DATA PROCESSING CENTER OR CENTERS.
- (4) THE SYSTEMS DIVISION OF THE AUDITOR'S OFFICE SHALL SUBMIT ANNUALLY, ON OR BEFORE JANUARY I, TO THE GENERAL ASSEMBLY OF MARYLAND AND THE GOVERNOR A CURRENT STATUS REPORT ON THE ACCOMPLISHMENTS OF THE SYSTEMS DIVISION. WITH THE REPORT OF THE EVEN-NUMBERED YEARS THE DIVISION SHALL ALSO FILE WITH THE GENERAL ASSEMBLY OF MARYLAND AND THE GOVERNOR SPECIFIC RECOMMENDATIONS FOR THE FURTHER ACCOMPLISHING OF PURPOSES OF THIS ACT.
- (5) FUNDS APPROPRIATED AND BUDGETED BY AGENCIES AND DEPARTMENTS FOR THE ACQUISITION OF COMPUTER AND COMPUTER-RELATED EQUIPMENT OR SERVICES, INCLUDING SOFTWARE PROGRAM PRODUCTS AND THE EMPLOYMENT ON A FEE BASIS OF ANY PRIVATE FIRM OR PERSON ACTING IN THE CAPACITY OF DATA PROCESSING CONSULTATNS OR SUPPLYING COMPUTER SUPPORT SERVICES FOR ANY EXECUTIVE LEGISLATIVE OR JUDICIAL DEPARTMENT OR AGENCY SHALL BE EXPENDED ONLY AFTER A DETERMINATION BY THE GOVERNOR THAT THE FOLLOWING FACTS HAVE OCCURRED: THAT A DETAILED REPORT HAS BEEN PREPARED OUTLINING THE STEPS TAKEN TO UTILIZE LIKE RESOURCES ALREADY EXISTING WITHIN THE AGENCIES OF THE STATE AND THE CONDITIONS REQUIRING THE ADDITIONAL RESOURCES; AND THAT THE ASSISTANCE OF THE SYSTEMS DIVISION OF THE STATE LEGISLATIVE AUDITOR'S OFFICE HAS BEEN SOUGHT IN THE PROPOSED EXPENDITURE.

SECTION 3. AND BE IT FURTHER ENACTED, That new Section 231G(f) be and it is hereby added to Article 41 - Executive and Administrative Departments, of the Annotated Code of Maryland (1971 Replacement Volume and 1976 Supplement) to read as follows:

Article 4! - Executive and Administrative Oppartments

231G. (f)

- (1) NOTICE. NOTICE INVITING BIDS SHALL BE PUBLISHED AT LEAST ONCE IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION IN THE STATE AND AT LEAST SEVEN DAYS PRECEDING THE LAST DAY SET FOR THE RECEIPT OF BIDS. THE NEWSPAPER NOTICE SHALL INCLUDE A GENERAL DESCRIPTION OF THE ARTICLES TO BE PURCHASEO, AND SHALL STATE WHERE BIO BLANKS AND SPECIFICATIONS MAY BE SECURED, AND THE TIME AND PLACE FOR DPENING BIDS.
- (2) BIDDERS LIST. THE DEPARTMENT SHALL MAINTAIN A BIDDERS LIST AND SHALL ADD DR DELETE NAMES FROM THE LIST BY THE APPLICATION AND UTILIZATION DF APPLICABLE STANDARDS SET FORTH IN SUBSECTION (5) DF THIS SECTION. IN ANY CASE, BID INVITATIONS SHALL BE SENT DNLY TD THDSE WHD HAVE EXPRESSED A DESIRE TD BID DN THE PARTICULAR TYPES DF ITEMS WHICH ARE THE SUBJECT DF THE BID INVITATION. USE DF THE BIDDERS LIST SHALL NOT BE CONFINED TD CONTRACT PURCHASES BUT IT MAY BE USED BY THE DEPARTMENT AS IT MAY FIND DESIRABLE IN MAKING ANY PURCHASE.
- (3) BID DEPOSITS. WHEN DEEMEO NECESSARY BY THE DEPARTMENT B ID OEPOSITS IN AMOUNTS TO BE SET BY THE DEPARTMENT SHALL BE PRESCRIBED IN THE PUBLIC NOTICES AND THE INVITATION TO BID. THE DEPARTMENT SHALL ESTABLISH AND MAINTAIN RECDRDS DF BID DEPOSITS AND THEIR DISPOSITION WITH THE CODPERATION DF THE STATE LEGISLATIVE AUDITOR, AND UPON THE AWARD OF BIDS OR REJECTION OF ALL BIDS, BIO DEPOSITS SHALL BE RETURNED TO UNSUCCESSFUL BIODERS MAKING BIO DEPOSITS. THE DEPARTMENT MAY ACCEPT A BID DEPOSIT IN THE FORM DF A BLANKET BOND FROM ANY BIODER.
- (4) BID DPENING PROCEDURE. BIDS SHALL BE SUBMITTED TO THE DEPARTMENT SEALED AND IDENTIFIED AS BIDS ON THE ENVELOPE. BIDS SHALL BE DPENED BY THE DEPARTMENT AT THE TIME AND PLACE STATED IN THE PUBLIC NOTICES AND THE INVITATION TO BID; PROVIDED, THE STATE LEGISLATIVE AUDITOR OR A MEMBER OF HIS STAFF MAY BE PRESENT AT ANY BID DPENING. A TABULATION OF ALL BIDS RECEIVED SHALL BE AVAILABLE FOR PUBLIC INSPECTION UNDER REGULATIONS TO BE ESTABLISHED BY THE DEPARTMENT.
- (5) AWARD DF CDNTRACT. THE DEPARTMENT SHALL AWARD CDNTRACTS TD THE BIDDER SUBMITTING THE LOWEST AND BEST BID CONFORMING TO THE SPECIFICATIONS. CDMPLYING WITH THE SPECIFIED TIME LIMIT FOR SUBMISSION OF WRITTEN DATA, SAMPLES DR MDDELS DN DR BEFDRE BID DPENING TIME IS ESSENTIAL TO THE MATERIALITY OF A BID, PROVIDED HOWEVER THAT THE DEPARTMENT SHALL HAVE THE AUTHORITY TO WAIVE THIS PROVISION IF THE FAILURE TO COMPLY IS BEYOND CONTROL OF THE BIDDER. IN DETERMINING WHO IS THE LOWEST AND BEST BIDDER, IN ADDITION TO PRICE, AND DEPARTMENT SHALL CONSIDER:

THE ABILITY, CAPACITY AND SKILL DF THE BIDDER TO PERFORM THE CONTRACT DR PROVIDE THE SERVICE REQUIRED;

WHETHER THE BIDDER CAN PERFORM THE CONTRACT OR PROVIDE THE SERVICE PROMPTLY, DR WITHIN THE TIME REQUIRED, WITHOUT DELAY DR INTERFERENCE;
THE CHARACTER, RESPONSIBILITY, INTEGRITY, REPUTATION, AND EXPERIENCE DF THE BIDDER:

THE QUALITY DF PERFDRMANCE DF PREVIDUS CONTRACTS DR SERVICES;
THE PREVIDUS AND EXISTING COMPLIANCE BY THE BIDDER WITH LAWS RELATING
TD THE CONTRACT DR SERVICE:

ANY PREVIOUS OR EXISTING NONCOMPLIANCE BY THE BIDDER WITH SPECIFICATION REQUIREMENTS RELATING TO TIME OR SUBMISSION OF SPECIFIED DATA SUCH AS SAMPLES, MDDELS, DRAWINGS, CERTIFICATES OR OTHER INFORMATION;

BILL NO. 5 - Page four

THE SUFFICIENCY OF THE FINANCIAL RESOURCES AND ABILITY OF THE BIODER TO PERFORM THE CONTRACT OR PROVIDE THE SERVICE;

THE QUALITY, AVAILABILITY AND ADAPTABILITY OF THE SUPPLIES, OR CONTRACTUAL SERVICES, TO THE PARTICULAR USE REQUIRED;

THE ABILITY OF THE BIDDER TO PROVICE FUTURE MAINTENANCE, REPAIR PARTS, AND SERVICE FOR THE USE OF THE SUBJECT OF THE CONTRACT;
THE NUMBER AND SCOPE OF CONDITIONS ATTACHED TO THE BID.

- (6) REJECTION OF BIOS. IF A BIO IS SUBMITTED IN WHICH THERE IS A MATERIAL FAILURE TO COMPLY WITH THE SPECIFICATION REQUIREMENTS, SUCH BID SHALL BE REJECTED AND THE CONTRACT AWARDED TO THE BIDDER SUBMITTING THE LOWEST AND BEST BID CONFORMING TO THE SPECIFICATIONS, PROVICEO, HOWEVER THE CEPARTMENT SHALL IN ANY EVENT HAVE THE AUTHORITY TO REJECT ALL BIDS OR PARTS OF BIDS WHEN THE INTEREST OF THE STATE WILL BE SERVED THEREBY.
- (7) BID RECORD. WHEN AN AWARD IS MADE A STATEMENT OF THE BASIS FOR PLACING THE OROER WITH THE SUCCESSFUL BIDDER SHALL BE PREPARED BY THE PURCHASING OLVISION AND FILED WITH OTHER PAPERS RELATING TO THE TRANSACTION.
- (8) TIE BIDS. IN CASE OF TIE BIDS, QUALITY AND SERVICE BEING EQUAL, THE CONTRACT SHALL BE AWAROED UNDER RULES AND REGULATIONS TO BE ADOPTED BY THE DEPARTMENT.
- (9) PERFORMANCE BONDS. THE DEPARTMENT MAY REQUIRE A PERFORMANCE BOND BEFORE ENTERING A CONTRACT IN SUCH AMOUNT AS IT FINDS REASONABLE AND NECESSARY TO PROTECT THE INTERESTS OF THE STATE. ANY BOND REQUIRED UNDER THIS SUBSECTION SHALL BE CONDITIONED THAT THE BIDDER WILL FAITHFULLY EXECUTE THE TERMS OF THE CONTRACT INTO WHICH HE HAS ENTERED. ANY BOND REQUIRED SHALL BE FILED WITH THE DEPARTMENT AND RECOVERIES MAY BE HAD THEREON UNTIL IT IS EXHAUSTED.

SECTION 4. ANO BE IT FURTHER ENACTEO, That all laws or parts of laws, public general or public local, inconsistent with this Act, are repealed to the extend of the inconsistency.

SECTION 5. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application, and to this end all the provisions of this Act are declared to be severable.

SECTION 6. ANO BE IT FURTHER ENACTED, That this Act shall take effect on July 1, 1977.

WRITTEN TESTIMONY EXECUTIVE BRANCH



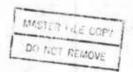


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State Creasurer's Göffice

Amagonic, Amplied 31464 July 8, 1976

The Honorable Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing c/o Division of Fiscal Research Legislative Services Building 90 State Circle, Room 226F Annapolis, Maryland 21401



Dear Chairman Rasmussen:

In response to your request of June 23, 1976, and in addition to my letter dated June 28, 1976, the following comments are offered with regard to the drafts of bills covering ADP acquisitions.

The comments, it must be noted, are an outgrowth of our own premise regarding State data processing functions. Specifically, the suggestions and comments arise from a belief that greater cost efficiencies and performance can be derived from more stringent centralized controls in this area.

While favoring legislation providing such control, we must emphasize that such legislation should also provide a reasonable degree of flexibility in the purchasing process. Adequate discretionary powers must be granted in appropriate areas, for the efficient administration of any program of purchasing controls.

BILL NO. 1 With the purpose of the proposed legislation being an attempt to maximize the control of State data processing purchases to promote efficiency and cost savings, the exceptions listed in section 23B.(1) are questionable. Though the dollar limitation appears reasonable, if the DBFP is to be responsible for purchases in this area, their approval should be required for all appropriate acquisitions. In addition, the exceptions listed for part-time students and health institutions are ambiguous as written.

The stipulation that the guidelines in the "State of Maryland Data Processing Standards Manual" must be adhered to is a necessary one. A recommended addition to this would be to advise that the manual and/or other directives which may be issued by the DBFP relative to data processing purchases are to be followed.

WRITTEN TESTIMONY EXECUTIVE BRANCH 5 to 12 is

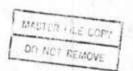


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State Creasurer's Office P. D. Box 2018

Americans. Americans 21404 July 8, 1976

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The stipulation that the guidelines in the "State of Maryland Data Processing Standards Manual" must be adhered to is a necessary one. A recommended addition to this would be to advise that the manual and/or other directives which may be issued by the DBFP relative to data processing purchases are to be followed.

The mechanics and handling of RFP's, bid proposals, etc., and stipulations as to contractual content, as listed in section 23B.(3) through 23B.(9), need not be contained in the law. Such detailed directions would be contained in the manual or in other DBFP directives, as outlined in the prior paragraph. It would seem appropriate that the DBFP should address problems such as emergency purchases in the aforementioned manual or by directive as suggested.

The last three paragraphs of section 23B.(9) are appropriate and necessary considering the intent of the proposed legislation.

BILL NO. 2 Recognizing the problems of flexibility loss in the acquisition process that over-regulation can create, this draft has much to recommend it. Responsibility for control is adequately assigned, applicability is comprehensive, and the details of the acquisition process are left with the DBFP to establish and modify as the situation demands.

One recommendation would be to require a \$10,000. limit over which competitive bidding is required, rather than the \$25,000. as listed. The grounds for exception in this area, as drafted, provides adequate flexibility.

 $\qquad \qquad \text{Those sections of Bill No. 1 we outlined as necessary are additionally recommended for inclusion here.} \\$

 $\underline{\rm BILL\ NO.\ 3}$ Although maximum use of competitive bidding in all areas of State purchasing should be encouraged, this draft provides no avenue to follow in instances where competitive bidding cannot be obtained. The law must allow non-competitive bidding at the discretion of the DBFP, for instances do in fact arise where system compatibility or application demands create a single-source situation.

BILL NO. 4 The authority given to the DBFP under this bill is ambiguous at best. Specificity provides firm footing for the DBFP to optimize efforts to eliminate unnecessary duplication and draw maximum benefits from available resources.

No significant benefits are seen in the creation of an automatic data processing fund as described. Granted an overall picture of State ADP expenses would result. Such knowledge, however, will not, in and of itself, enhance the control of expenses and increase efficiency. The sought after efficiencies in this area can be achieved through refinement of the budget and equipment purchase approval processes now in use. Unable to recognize the benefits of creating such a fund, the administrative costs for its implementation and maintenance cannot be justified.

This bill calls for the preparation of a yearly report by the DBFP on ADP equipment inventory and utilization. Such a report would have value in an ongoing program to achieve efficiency in State ADP usage. Further enhancing its value, and in line with the DBFP's responsibility to improve the efficiency and economy of State data processing functions, would be the inclusion in such a report of information relative to specific achievements, problem areas, goals, etc. In essence, such supplemental information would create a yearly progress report, of more value than statistics alone in any effort to effectively manage State data processing functions.

BILL NO. 5 ${
m BILL\ NO.\ 5}$ In creating a Data Processing Systems Division in the office of the Legislative Auditor, and in charging this new division with the responsibility for controlling State ADP functions, this bill is weak in several areas, not the least of which is the creation of two additional levels through which purchase requests must pass. Charged with such responsibility, this new division is not given specific final approval authority for data processing purchases. Final approval authority vests with the Governor as this bill is written. Section 61B.(5) directs that prior to any data processing expenditure the Governor be advised that the assistance of this new Systems Division has been sought. Assuming that the Systems Division has the expertise to evaluate the purchase requests and make recommendations, what value lies in channeling the ultimate decision making power to another level? Even with this new Systems Division having final purchase approval authority, it remains as an additional department involved in the decision process. Reasonable expediency in the decision making process should be sought, and same might not be achieved with this bill as drafted.

Another factor to be considered in evaluating this bill, is the desirability of maintaining a separation of governmental powers, as provided for in the establishment of Executive, Judicial, and Legislative bodies. Providing the Legislature with the powers stated would tend to obfuscate the desired distinctions in the resulting functional governmental structure. The Legislature being given even an advisory voice in an obviously Executive branch function, might be an arguable move in light of basic theories of governmental checks and balances.

<u>CONCLUSIONS</u>: Bill No. 2, with the following suggested exceptions and additions, appears to offer the degree of control desired and yet does not restrict the flexibility necessary in certain situations. In its assignment of responsibilities ϖ the DBFP and to the Department of General Services, alterations to present purchasing mechanics and procedures are minimized, and the additional costs of such alterations are avoided.

- Require competitive bidding on items greater than \$10,000. rather than \$25,000. as listed. The lower figure should help minimize existing problems relative to sole-source contracts.
- 2) Inclusion of directives relative to the maintenance and use of a Bidders List as outlined in section 231G.(2) of Bill No. 5.
- 3) Suggest that the legislation address the complaint of "unreasonable deadlines for receipt of proposals from vendors in a competitively bid situation."
- Suggestions as contained in our comments covering Bills No. 1 and No. 4.

Those problem areas relative to ADP operations outlined by your staff that are not addressed by our suggestions, appear to be areas best suited to an approach that will not be restricted by specific legislation.

We sincerely appreciate the opportunity to review the proposals offered, and we hope that our suggestions might be of some aid in your deliberations.

Sincerely,

WILLIAM S. JAMES TREASURER

WSJ:jcw



STATE OF MARYLAND

COMPTROLLER OF THE TREASURY

STATE INCOME TAX BUILDING ANNAPOLIS, MARYLAND 21401 TELEPHONE - 267-5636

June 29, 1976

LOUIS L. GDLDSTEIN COMPTROLLER J. BASIL WISNER CHIEF DEPUTY

DATA PROCESSING DIVISION ARTHUR L. SOUTHARD, JR.

ROBERT W. DEPEW

Mr. Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations General Assembly of Maryland Legislative Services Building Annapolis, Maryland 21404

Dear Mr. Rasmussen:

As requested in your letter of June 23, 1976, the several bills which were enclosed have been reviewed. The following comments are submitted for your consideration.

BILL NO. 1:

This is the legalization of the present DBFP procedure, therefore the shortcomings of the present system will continue to affect us. The bill allows the continuation of direct control over data processing by a staff function and the role assumed may not be in the best interest for all concerned.

BILL NO. 2:

Same as bill No. 1 except this places the procurement responsibility in the Department of General Services. The Agency (Annapolis Data Center) still would have to prepare technical specifications as we do now. We would still have to acquire MISD approval which means re-plowing the same ground we plowed to develop the specs. Then, quite probably, re-plow it again with DGS. If MISD were left out of the cycle, however, this procedure would be a considerable improvement.

BILL NO. 3:

Entirely too restrictive. Further, MISD would have an even greater strangle hold on the Data Center Directors.

BILL NO. 4:

The MISD would continue to exist under this bill. The proposed funding procedure would give MISD positive and complete control of the funds for data processing. This could be interpreted to mean MISD has control over expenditures for salaries and all other expenses in the operation of a Data Center. Such a situation would be totally unsatisfactory — a staff organization, MISD, cannot satisfactorily discharge the functions of an operating agency. They do not have the personnel, experience, know-how, etc. to be able to do the job.

Also, Section 23B(a) is in conflict with Section 23B(b).

BILL NO. 5:

No comment.

My position Is that none of these bills are acceptable in their present form.

Very truly yours,

Arthur L. Southard, Jr.

Director

ALS:cew

STATE OF MARYLAND

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION 301 WEST PRESTON STREET

BALTIMORE, MARYLAND 21201

J KEVIN MUELLER DEPUTY DIRECTOR

WILLIAM E SMITH STATE SUPERVISOR OF ASSESSMENTS

THOMAS L BALL CHIEF OF TRAINING AND VALUATION

RICHARD D. DOOLITTLE SUPERVISOR PERSONAL PROPERTY ASSESSMENTS



June 30, 1976

The Honorable Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations

Dear Mr. Rasmussen:

Attached are my comments on the Data Processing procurement and contracts bill proposal as you requested.

I have responded on each bill as a separate item and sincerely hope my comments are of some benefit to your Committee.

Yours truly,

John Zum

John Quinn

MASTER FRE COPY

THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION REVIEW BY JOHN QUINN - COORDINATOR

Response to Bill #1 (Current Budget Bureau Procedure Codified)

23 B. Data Processing

Reference Paragraph (2)

"The Secretary, after consultation with the State Comptroller" etc.

Comment: I think that this reference to the State Comptroller should be removed. This wording makes responsibility vague by qualification. It would seem more precise by placing the full authority with the Secretary --- or a further refined definition of the Comptroller's roll.

Reference Paragraph (1)

line 13 - "Contracts which do not exceed \$2,500.00 in Total Payment during one Fiscal Year"

Comment: This amount appears to me to be an unrealistic minimum to enforce such cumbersome procedures on an Agency. I believe the intent of Legislation such as this, is to insure that the State of Maryland in its large data centers leases or acquires expensive computers and peripheral equipment in a competitive and cost effective fashion. Smaller, less sophisticated equipment, needed by Agencies (such as Accounting Machines or small processers) should not be subject to such a cumbersome procedure. I believe a simpler procedure could be developed for smaller, stand alone equipment, and still insure that desirable methods of doing business are insured.

Summary Comment on Bill # 1

Such procedures appear to be viable and workable concerning large data centers intending to secure or upgrade large data systems. They appear unrealistic and an overkill in relation to stand-alone equipment leasing that would lease in the \$2,500 to \$10,000/year range.

Response to Bill # 2 (Architects & Engineers subtitle with modifications)

23 B. Data Processing

Reference line 1 "after consultation with State Comptroller"

Comment: Feel this should be omitted.

Reference line 4 "All changes effected by any Department or Agency

pertaining to Data Processing shall first be reviewed and approved by the Secretary for compatability with existing procedures and equipment"

Comment: This sentence very definitely needs qualification. Changes take place daily in data processing programs and procedures throughout the State. To require a review on these type of changes would bring needed operations to a complete stall. Wording should be revised to be more specific on the type of changes needing review.

Summary Comment: The procedure as outlined appears very appropriate. It separates equipment and services by a seemingly logical value and utilizes the resources of two Departments (Budget and General Services) in their specialty areas.

Response to Bill #3 (Current California Statute)

23 B. Reference line 1 "after consultation with the State Comptroller"

Comment: Eliminate this reference.

Reference line 4 "All changes effected ----- procedures and equipment"

Comment: This sentence should be revised to be more precise on what type of changes must be pre-reviewed.

Summary Comment: 1 feel that this bill covers the intent of the proposed bill very stringently. 1 would only suggest that this bill be blended with Bill # 2 to insure that technical specifications are developed by Budget and the bid is let and awarded by General Services.

Response to Bill #4 (Federal Books Act of 1965)

Summary Comment: I feel this is the least desirable of all the bills. It places too much authority in the hands of one State Agency and appears to eliminate certain checks and balances that should exist. The concept of a Central Fund distorts Fiscal responsibility and seems to place the entire authorization for these needed services completely beyond the control of the Agency needing these services. This, in my opinion can only have a negative impact on the accomplishment of an agency's objectives and responsiveness.

Despite the authority qualification paragraph at the top of page three (3), I do not feel this bill to be an improvement to existing method of operation.

Response to Bill #5 (Current Texas Statute)

Summary Comment: I feel that a proposal to switch such an authority (Systems Group) to the Legislative area, will compound the difficulty that an agency faces in implementing improvements. A concrete acquisition policy, assisted by the interface of Budget and General Services in the bid process, will insure improvement and logical, effective expenditures.

If anything, current operations need checks and palances, not complete alteration. At this point in time - without further information - I am not in favor of this bill.

Conclusion: The intent of this legislation, I believe, would be most logically met by improving acquisition policies to insure performance, cost effectiveness, competition, and logical selection for bid award. I believe these goals would be promoted most appropriately by Bill #2.

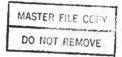


STATE OF MARYLAND DEPARTMENT OF BUDGET AND FISCAL PLANNING

R. KENNETH BARNES

June 29, 1976

Delegate Dennis F. Rasmussen Chairman, Subcommittee on State Data Processing c/o Division of Fiscal Research Legislative Services Building 90 State Circle, Room 226F Annapolis, Maryland 21401



Dear Delegate Rasmussen:

In response to your June 23, 1976 request for members of the Department of Budget and Flscal Planning to review and comment on five draft bills concerning acquisition of various data processing equipment, supplies and services, we offer this consolidated response.

Dr. Barnes Is on vacation this week and therefore cannot respond to your request. Nevertheless, on the basis of our many discussions on this subject, I can confidently state that, as Secretary, he is committed to the principle of free and equal access for all vendors and consultants desiring to perform those services or to provide the supplies and equipment needed to carry on the functions of government. I believe it is acknowledged that the actions of the great majority of employees in positions of responsibility reflect this principle in action. We are concerned, as is the Subcommittee on State Data Processing, that certain actions in the past have not been supported by publicly presented documentation and as a result, given the impression of a deviation from this policy. This is unfortunate and will be remedied as quickly as possible.

 $\label{thm:constraints} The \ Subcommittee \ has \ presented \ the \ following \ five \ draft \ proposals \ which are aimed at correcting these perceived \ deficiencies.$

Bill No. 1

This draft basically alms at codifying the current Department of Budget and Fiscal Planning's Manual contractual procedures. We believe the procedure offers both a clear statement of policy and an excellent administrative mechanism for implementing the intended checks and balances necessary in the letting of a State contract for goods or services.

It is, however, essentially a statement of an administrative mechanism. It sets forth certain standards of information and documentation and provides for the flow of paper within the administrative structure of the

various State agencies such as: "the contract must be approved as to form and legal sufficiency...within two working days"; the Department of Budget and Fiscal Planning must "...assign a control number". This mechanism must be continually reviewed to determine whether deficiencies exist which should be corrected. As an illustration, the Board of Public Works at its June 25, 1976 meeting discussed the possibility of BPW involvement in the approval process of a greater number of contracts.

As an administrative procedure these changes can be incorporated into the policy to meet deficiencies as they arise. Codified, changes present time-consuming and burdensome procedures. We believe it would be more appropriate for the legislation proposed to set forth the principle of competition where it is in the best interest of the State and of free and equal access to State business. The administrative mechanism for achieving this goal should rest with the Executive branch.

Bill No. 2

This draft proposal assigns acquisition and contract administration of data processing to the Department of General Services. This proposal introduces certain checks into the system to the extent the Department of General Services acquires the independent expertise to verify the integrity of specifications for equipment or services. To a certain degree this expertise will possibly duplicate that in the Department of Budget and Fiscal Planning and in the agencies. The Department of Budget and Fiscal Planning has no objections to this draft but rather wishes to state its feeling that without independent expertise in the Department of General Services, the checks within the system are considerably weakened.

Bill No. 3

This draft appears to set forth the <u>absolute</u> requirement for competitive bidding. This policy should be followed in the great majority of contracts but there may be instances where, due to an emergency or the existence of other circumstances a particular single vendor is indicated. An example of other circumstances may be the instance where a vendor has performed the initial design on a system to be modified and the time frame for the desired modification is critical. In this instance it <u>may be</u> in the best interest of the State, considering all circumstances, to request the services of a single vendor. The documentation of a deviation from the competitive bid principle should be thorough, extensive and supportive of the decision.

The Department of Budget and Fiscal Planning has no objection to this draft if it were modified to provide relief for the extraordinary case and also provide that the award shall be made after an evaluation of both price and technical proposal.

Bill No. 4

This proposal provides for the creation of a fund to finance data processing activities including procurement, personnel services and supplies; provides that the Secretary shall provide scientific and technological advisor services; shall have the power and authority to provide "Automatic data processing

equipment suitable for efficient and effective use by State agencies and...to transfer automatic data processing equipment between State agencies" (page 1 of draft) but shall not "...interfere with the determination by agencies of their individual automatic data processing equipment requirements" (page 4).

This draft appears to be inconsistent in that it charges the Secretary with providing efficient and effective use of data processing equipment through purchase, lease or transfer, but prohibits him from deviating from the individual agencies determination of their own data processing equipment requirements and from interfering with or attempting to control the use of data processing equipment by agencies.

The draft also permits the Secretary to transfer equipment but is silent as to the transfer of personnel and funds for operation of the equipment.

The establishment of a fund to finance all costs of data processing appears to be unnecessary; however, the establishment of a fund to finance capital acquisition and installation costs has merit. It relates to the requirement by various Federal agencies that capital costs be recouped over the life of the item rather than at the time of financing and in the amount paid. The fund concept also permits the application of a more stable billing rate because of the leveling out of expenditures through depreciation and amortization of capital expenses.

On balance this draft has serious deficiencies which preclude the Department of Budget and Fiscal Planning from endorsing its contents.

Bill No. 5

Article 15A, Section 23B is amended by this draft by deleting the statutory planning and control responsibilities of the Secretary, Department of Budget and Fiscal Planning. It establishes within the Legislative Auditor's office an automated data processing systems division with advisory responsibility in determining the needs of automatic data processing equipment. The systems division would also be responsible for the development of continuing plans for the use of automatic data processing equipment. It also sets forth certain information which must be obtained before funds may be expended for certain computer equipment. The draft also proposes certain contractual procedures to be followed within the Department of General Services in soliciting bids and awarding contracts.

The Department of Budget and Fiscal Planning believes that the capability for management review and performance evaluation should be available to the State, either through resident staff or consultants and that the appropriate place for this service is in the Legislative Auditor's office. We do not, however, believe it is the proper role of an audit staff to recommend administrative action and then audit their own decisions.

In addition, since the Legislative Auditors authority is advisory only it appears another body having this expertise would need to be established within the Executive branch to perform basically the same function as well as providing monitoring services of proposed applications, system development, computer performance, etc. for executive decision making.

Delegate Dennis F. Rasmussen

June 29, 1976

These comments essentially reflect a general evaluation of the direction proposed in each draft rather than a detailed evaluation of every point within each proposal. Because of the time frame for response we took the more general approach. Our comments are meant to be constructive since we all have an obligation to insure that not only the policies directing our action but the implementation of those policies are in the best interest of the citizens.

If we can be of additional assistance please feel free to contact us.

Very truly yours,

Thomas W. Schmidt Deputy Secretary.



Office of the Secretary

2525 Riva Road, Annapolis, Maryland 21401 • 301 – 267-5176

Marvin Mandel Governor Joseph G. Anastasi Secretary

July 2, 1976

The Honorable Dennis F. Rasmussen Subcommittee on State Data Processing Legislative Services Building 90 State Circle, Room 226F P. O. Box 231 Annapolis, Maryland 21404

Dear Dennis:

In accordance with your letter of June 23, the attached memorandum will serve as the Department of Economic and Community Development's (DECD) comment on the five bills concerning ADP acquisitions.

 $\,$ Mr. Robert M. Sparks, Director of Administration for DECD, prepared DECD's comments. If you have any further questions, I suggest you contact Mr. Sparks.

Sincerely,

Joseph G. Anastasi

JGA/dc Enclosure

cc: Bob Sparks



MEMORANDUM

July 1, 1976

TO: Joseph G. Anastasi

FROM: Robert M. Sparks

SUBJECT: Requested Comment on Proposed ADP Bills



The Chairman of the Subcommittee on State Data Processing of the House Committee on Appropriations sent us five bills concerning Automatic Data Processing Goods. My comments on each are provided below. In each case the basic source from which the bill was derived is put in parentheses opposite the bill identification.

Bill No. 1 (Current Budget Bureau Procedure Codified)

Provides for ADP control by DBFP with some room for agency flexibility. We could live with this bill despite its very detailed requirements. As indicated in the parentheses above, there is little new here, therefore it provides a source of continuity and security.

Bill No. 2 (Architects & Engineers Subtitle with Modifications)

This would require approval of all transactions by two agencies:

- (a) DBFP for technical specifications, and
- (b) DGS for preparation and solicitation of a competitive bid solicitation.

This would add to the time and trouble involved in preparing a purchase. A single agency responsibility clearly spelled out as in Bill No. I would be preferable.

Bill No. 3 (Current California Statute)

Basically the same as No. 1 without procedures spelled out -since procedures are not spelled out it gives DBFP a blank check for its regulations. I would prefer more attention to detail.

Bill No. 4 (Federal Brooks Act of 1965)

This bill provides for equipment transfers and equipment pooling controlled by DBFP. It stresses technical advice by DBFP and joint utilization but protects the independence of each agency to determine "use made of ADP equipment".

Bill No. 5 (Current Texas Statute)

This bill places responsibility for ADP purchases in the office of the Legislative Auditor. Although the Legislative Auditors would have the same basic responsibilities as would DBFP in Bill No. 1, I see two advantages in the latter:

- (a) It shows much more consideration for the participation of the user agency in effecting a purchase
- (b) DBFP is closer operationally to the user agency than the Legislative Auditors and would be likely to have a better understanding of its problems.

The above analysis indicates to me that we would be better off with Bill No. 1 than with any of the others. Under this bill, any of the real advantages of any of the others could be incorporated either by amendment of the bill or by administrative regulation.

RMS:rmm



OFFICE OF THE SECRETARY

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

201 WEST PRESTON STREET . BALTIMORE, MARYLAND 21201 . Area Code 301 . 383. 6195

Neil Solomon, M.D., Ph.D., Secretary

July 15, 1976

Honorable Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations General Assembly of Maryland P. O. Box 231 Annapolis, Maryland 21404

Dear Mr. Rasmussen:

I am enclosing the Departmental position on the five draft bills developed by the subcommittee.

We share your goals of clarifying and/or correcting deficiencies in the current ADP procurement and contracts regulations, but we must avoid the stultifying effect of codification of procedure into statute and the delay implicit in the addition of other organizations into what is now a time consuming and complex process of ADP procurement. We certainly have no objection to legislation that encourages competition with proper safeguards for exceptions.

Thank you for the opportunity to participate in the development of legislation in this important area.

Sincerely yours,

Neil Solomon, M.D., Ph.D.

Secretary of Health and Mental Hygiene

NS:ahh Enclosure

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Position Statements on Draft Bills Developed by the Subcommittee on State Data Processing House Committee on Appropriations

Bill No. 1 - Current Budget Bureau Procedure Codified

Position - OPPOSED

There is no reason to codify procedure into statute since minor changes in procedure will require the statute to be amended. Little of practical value will be achieved by this codification when weighed against the difficulty of maintaining the procedures through the legislative process.

Bill No. 2 - Architects and Engineers Subtitle with Modifications

Position - OPPOSED

The specialized nature of ADP procurements requires the participation of agencies that have the requirement in the evaluation, negotiation, and award process. The role of the Department of General Services would become additive in the procurement process and introduce additional delay in procuring ADP equipment and services. Alternatively, this bill could result in a delegation of procurement responsibility which would defeat the intent of the bill.

Bill No. 3 - Current California Statute

Position - NO OBJECTION (with amendment)

The Department has no objection to this draft bill if an "escape clause" is provided for those few cases where sole source procurements are in the best interests of the State. The proposed amendment recommends Board of Public Works approval to preclude abuse of this exception:

Amendment to Section 1, Article 23B - last line change the period to a comma and add, "except where approval is given by the Board of Public Works in each instance."

Bill No. 4 - Federal Brooks Act of 1965 (P.L. 89-306)

Position - OPPOSED

This bill assigns the Secretary of the Department of Budget and Fiscal Planning a formal statewide operational role in addition to his planning and coordinating role for Data Processing. This role is inconsistent with his primary role since it places the Secretary into day-to-day operations, which conceivably could impair his view of fiscal and policy control with which he is charged.

Currently the Baltimore Computer Utility is operated by the Department of Budget and Fiscal Planning to support most agencies in the Baltimore Complex. The concept of FOCUS is to utilize such concentrations of computing capability in an efficient and effective manner and is properly a policy to be developed and promoted by the Department of Budget and Fiscal Planning as the control agency. Less clear is the issue of who is charged with operational responsibility for the data centers.

It is the Department's firm conviction that a control agency should be exclusively concerned with fiscal and policy matters in order to be an unbiased arbiter of any differences between the users and providers of computer services in the State.

The Department has no objections to the funding portion of the draft bill but opposes the formal linking of control agency and operational functions.

Bill No. 5 - Current Texas Statute

Position - OPPOSED

This bill assigns to the Legislative Auditor Executive Branch functions of policy and coordination which are now performed by the Department of Budget and Fiscal Planning.

The proposed bill will effectively create another review level since the Department of Budget and Fiscal Planning cannot be totally removed from the planning and coordinating process if it is to carry out its statutory responsibility.

STATE OF MARYLAND

MARVIN MANDEL

Governor

DEPAR MENT OF HUMAN RESUJECES

1100 NORTH EUTAW STREET BALTIMORE, MARYLAND 21201

July 13, 1976

RICHARD A. BATTERTON Secretary

WILLIAM G. SYKES Deputy Secretary

Mr. Dennis F. Rasmussen
Chairman
Subcommittee on State Data Processing
House Committee on Appropriations
Legislative Services Building
90 State Circle, Room 226F
Post Office Box 231
Annapolis, Maryland 21404

MASTER FILE COPY

DO NOT REMOVE

Dear Mr. Rasmussen:

I, and my stsff, have reviewed the five draft bills on the subject of Automatic Data Processing equipment and services procurement. The following comments reflect the position of the Department of Human Resources on possible legislation in this area.

The Department fully supports the concept of maximizing the free and open sccess of all vendors to procurement of data processing equipment and services by the State. It is questionable, however, whether additional legislation is necessary to serve this purpose. Article 15A, Section 3, Paragraph 23B currently places primary responsibility in the Department of Budget and Fiscal Planning for planning and control of the State ADP function. Further the Governor's Executive Order of October 28, 1969, details the specific authority to be exercised by the Department of Budget and Fiscal Planning, including in Paragraph E "Acquisition of new equipment, augmentation of new equipment, or disposal of equipment no longer required must have prior approval of the Department of Budget and Fiscal Planning", and in Paragraph H "All contracts or partnerships affecting State ADP resources will be accomplished by and through the Department of Budget and Fiscal Planning". The Data Processing Standards Manual, issued by the Department of Budget and Fiscal Planning through its Management Information Services Division, details the specific procedures to administer the current legislation and executive order.

The draft bills would seem to either formalize into statute an already existing procedure, or create possible additional delays in an already complex procurement process by involving additional organizations into the procedure. Enclosed is our specific comments on each of the five draft bills.

Mr. Dennis F. Rasmussen

July 13, 1976

Thank you for allowing us to input our thinking on this most important matter.

Very truly yours,

Secretary

Picheno NiBothate

RAB:md Attachment

cc: R. Winter W. Sykes G. Riordan

- 67 -

DEPARTMENT OF HIMAN RESOURCES

COMMENTS ON DRAFT BILLS

DEVELOPED BY

THE SUBCOMMITTEE ON STATE DATA PROCESSING

Bill No. 1 - Current Budget Bureau Procedure Codified

Codifying the existing procedure into starute would seem to serve no useful purpose, especially when comparing the problem of maintaining the procedure through the legislative process versus the relatively simple process of modifying an administrative procedure.

Bill No. 2 - Architects and Engineers, Subtitle with Modifications

The very specialized nature of ADP procurements requires a certain expertise not currently available in the Department of General Services. The acquisition of this expertise would duplicate functions currently performed by the Management Information Systems Division of the Department of Budget and Fiscal Planning, and the data processing organizations of the other departments. More importantly, however, it would create another administrative step in the already lengthy process of procuring data processing equipment and services.

Bill No. 3 - Current California Statute

This bill is too absolute. There is no escape from competitively bidding every procurement regardless of value, time considerations, competitive availability or other considerations. Some mechanism must be provided for by-passing the competitive bid procedure when justified.

Bill No. 4 - Federal Brooks Act of 1965

There are inconsistent and conflicting responsibilities between the Department of Budget and Fiscal Planning and other Departments in the wording of this bill.

It would seem to give the Department of Budget and Fiscal Planning both an operational as well as a control role in State data processing activities. This would seem to be a conflict of responsibilities. In addition, it would seem inconsistent that the Department of Budget and Fiscal Planning would be "authorized and directed to coordinate and provide for the economic and efficient purchase, lease and maintenance of automatic data processing equipment by State agencies" but that authority "shall not be so construed as to impair or interfere with the determination by agencies of their individual automatic data processing equipment requirements, including the development of specifications for and the selection of the types and configurations of equipment needed".

Bill No. 5 - Current Texas Statute

This bill would assign to the Legislative Branch those functions of data processing policy and coordination currently being performed by the Department of Budget and Fiscal Planning. Assuming that the Department of Budget and Fiscal Planning would retain some planning and coordinating responsibilities, another review and approval level would be generated with the concurrent time delays. The question also arises as to the appropriateness of establishing in the Office of the Legislative Auditor both the recommendatory and audit review functions for data processing activities.

The proposed Bill No. 5, Current Texas Statute, presents an acceptable plan in concept. The development of a reviewing authority in the Legislative Branch certainly has merit, but the existing Management Information Systems Division of the Budget Bureau could also logically be the authority. The bill contains specified reporting requirements for the MISD for purposes of legislative review. There is a clear, well-written competitive bidding procedure which would fit in well under the State's existing ADP structure. The concept of performance bonding is approached. This is certainly important in bidding situations as the agency has a hold on the vendor for meeting the performance specifications indicated in the RFP or contract. Consideration should also be given to the concept of rental or lease reduction when performance falls below contract level.

The Department of Natural Resources hopes this response will give some insight into the problems and suggested remedies as seen by our staff. I will be pleased to supply additional information if required or have a member of our staff discuss with you any of the points or comments we have made.

Sincerely yours

Thomas C. Andrews

Director of Administration

TCA: jh
cc: Thomas F. McCabe
Charles N. Benil



Marvin Mandel GOVERNOR



Henry G. Eusa SECRETARY

301 West Preston Street, Baltimore, Maryland 21201

July 13, 1976

Honorable Dennis F. Rasmussen Chairman, Subcommittee on State Data Processing House Committee on Appropriations Legislative Services Building 90 State Circle, Room 226F Annapolis, Maryland 21404

Dear Mr. Rasmussen:

This is in response to your letters of June 23 and June 30.

If you have any further questions, please let me know.

Sincerely,

Henry G. Bosz

Secretary of Personnel

HGB/jme

Enc.

cc: Mr. J. O'Brien Mr. G. Lyons



DEPARTMENT OF PERSONNEL

Marvin Mandel GOVERNOR



Henry G. Bosz SECRETARY OF PERSONNEL

301 West Preston Street, Baltimore, Maryland 21201 July 12, 1976

MEMO TO: Mr. Henry Bosz FROM: George Lyons

SUBJECT: Draft Legislation for Data Processing

I have reviewed the Bills relating to the acquisition of data processing equipment and services, sent to us by the Subcommittee on State Data Processing.

The attached draft legislation identified as Bill No. 1 and Bill No. 2 provide for sound ADP procurement and contract regulation.

I would like to submit the following comments and suggestions.

BILL NO. 1 Source: Current Budget Bureau Procedure Codified

This bill should empower the Department of Budget and Fiscal Planning to exercise control by promulgating the "State of Maryland Data Processing Standards Manual" as the guideline for ADP procurement and contract regulation.

Page two, first sentance - The amount of \$2,500.00 should be deleted, and reference to the amount made in the guidelines of the State of Maryland Data Processing Standards Manual.

Page two, three, four & five - Paragraphs 3, 4, 5, 6, 7, 8 & 9 should be deleted. These items should be included in the guidelines of the State of Maryland Data Processing Standards Manual.

BILL NO. 2 Source: Architects & Engineers Subtitle with Modifications

This bill would take advantage of guidelines and procedures already in effect in the Department of General Services. It has the distinct advantage to the State of only having one set of standards for the acquisition of equipment.

Inter-actions between the requesting agencies, Department of Budget and Fiscal Flanning, Department of General Services and the contractors may tend to delay the processing of transactions.

Draft Legislation for Data Processing - Page 2

The remaining Bills No. 3, 4 and 5 do not seem to be as comprehensive or afford the necessary safe-guards incorporated in Bills 1 and 2.

I appreciate the opportunity of commenting on this legislation. Please contact me if I can be of further assistance.

GEL/mm



Marvin Mandel Governor Herry R. Hughes

July 15, 1976

The Honorable Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations P.O. Box 231 Annapolis, Maryland 21404

Dear Delegate Rasmussen:

As requested in your letter of June 23, 1976, the five draft Bills pertaining to State acquisition of data processing goods and services have been reviewed. The attached comments on the Bills represent the position of the Department and are provided in response to the letters to Messrs. Moser, Green, Cox, Register, and myself.

As you will note, a sixth alternative is favored by this Department. It proposes that the Department of Budget and Fiscal Planning be given responsibility for overall coordination, guidance, advice and assistance to the various State agencies while leaving those individual agencies and departments the responsibility for funding and acquisition of ADP services and goods. It further establishes the Secretary, Department of Budget and Fiscal Planning, as the Chairman of a State ADP Management Review Board and defines the broad functions of the Board. A suggested draft for this sixth alternative is attached.

Please note that due to the complexity of the Bills and the relatively short time allowed for comment, the proposal has not been coordinated with the Department of Budget and Fiscal Planning. A copy of our proposal is being forwarded to Secretary Barnes, Deputy Secretary Schmidt, and Mr. Philip Martin, Chief, Division of Management Information Systems, Department of Budget and Fiscal Planning. Our proposal is, however, consistent with my testimony on September 9, 1975 before the House Appropriations Committee.

The Honorable Dennis F. Rasmussen Page 2 July 15, 1976

We respectfully request your Subcommittee consider our proposal in its deliberations.

Secretary

HRH/sld Attachments

Secretary R. K. Barnes
Department of Budget and Fiscal Planning
Deputy Secretary T. W. Schmidt
Department of Budget and Fiscal Planning
Mr. Philip Martin
Department of Budget and Fiscal Planning
Mr. R. A. Moser
Mr. R. A. Moser
Mr. R. R. Green
Mr. R. H. Cox
Mr. H. Register
Members of the ADP Management Review Board

COMMENTS ON PROPOSED BILLS PERTAINING TO ACQUISITION OF ADP GOODS AND SERVICES

General Comments

The draft Bills present such varied approaches to the subject of acquisition of ADP goods and services that it is difficult to analyze the probable impact of each Bill. The variety in the language, depth and concepts in the Bills make it somewhat questionable that they represent substitutable alternatives. For example, some Bills present in great depth modifications to existing basic policies with regard to the contracting process; others deal deeply with competitive bidding procedures and limits; and another focuses on processes for purchases through the Department of General Services.

As a result of the above, it is recommended that the language of the Bills under review be limited to the assignment of basic responsibilities for planning and coordination of State ADP resources and the providing of basic policy guidance concerning the development and utilization of these ADP resources. Additional legislation could cover the details of procurement if necessary.

Each Bill contains dollar levels at which procedures or responsibilities for procurement tend to change. It appears desirable that this level be considered separately from the general review of responsibilities contained in the draft Bills. This Department favors establishment of a certain dollar amount over which competitive procurement would be required pursuant to guidelines and standards established by the Department of Budget and Fiscal Planning. We do not agree that all ADP procurement actions should be bid competitively as seems to be the case with some of the draft Bills. In addition, the language of some of the draft Bills may not be appropriate for legislation and it appears that substantial rewrite may be necessary.

All of the Bills use the terms "bid" and "Request for Proposal" or "RFP" interchangeably. This is confusing and should be brought into conformity with existing definitions prior to the establishment of the final draft Bill.

Bill #1 (Current Budget Bureau Procedure Codified). This Bill continues and strengthens the Department of Budget and Fiscal Planning's centralized control over ADP. The procedures outlined do not provide the Departments with the degree of responsibility necessary to control their own ADP operations and are considered overly centralized.

The draft Bill appears to contain administrative procedures which are more detailed than need be for inclusion in the law. In addition, the Bill continues to exempt certain expenditures for items which are required to be approved by the Board of Public Works or are controlled or acquired by the Department of General Services. This type of language is currently confusing Department of Transportation contract operations.

The exemption of contracts for "design, acquisition, and construction..." in paragraph b (1) could be strengthened by indicating that data processing services in such contracts are ancillary to the main purpose of such contracts and are not included under the requirements of this Section. The language should also be extended to include architectural and engineering contracts.

Page 2, line 7 of the Bill contains reference to Section III., C., 2 which presumably is a section of the ADP Standards Manual.

The use of the phrase "established practice in the field" used on page 2 (subsection (4), line 4) is not clear and does not appear to be a valid reason for noncompetitive procurement.

Subsection (6) on page 3 appears to be redundant with preceding material and causes confusion in understanding of the Bill.

 $\frac{\rm Bill}{\rm H2}$ (Architects and Engineers Subtitle with Modifications). This $\frac{\rm Hill}{\rm Expands}$ the role of the Department of General Services in an already complex procedure dealing with very highly specialized equipment. Since each contract is essentially a "hand tailored" document dealing with equipment and services not completely mass produced, it does not appear that the routine involvement of another organization will be efficient or effective.

Under this Bill, the Department of Budget and Fiscal Planning retains the responsibility for preparation of technical specifications. We consider this function more appropriate to the using agencies and departments.

As noted before, Bill #2 contains the confusion of terms "bid" and "RFP."

The reenactment of Article 41, Section 231 G (a) is likely to confuse the contracting process because this Article is in a general Statewide purchase contracting language to which the Bill proposes to add a very specific and detailed subelement on data processing contracting.

Bill #3 (Current California Statute). This Bill requires that all contracts, regardless of dollar value, urgency, availability, or other considerations be processed under competitive bid. We feel that this procedure will "slow down" the acquisition process and may, in fact, be costly in the case of low dollar value acquisitions. In our opinion, provision should be made for several types of purchasing rather than simply call for competitive bidding in all cases.

Under this Bill it is not clear whether "State agency" could validly include the Maryland Transportation Authority and whether it could be used to interfere with the acquisition of data processing goods and services by MTA's bondholders.

 $\underline{\text{Bill}}\ \#4$ (Federal Brooks Act). The wording of this Bill is confusing. On one hand it tends to establish the Department of Budget

and Fiscal Planning as a strong central authority for all ADP acquisition activities and yet gives Department of Budget and Fiscal Planning virtually no control or influence over equipment after it is in the hands of departments and agencies. The presence of these extremes within the Bill make it questionable that the process will be workable. In addition, we do not agree with the strengthening of the central authority's role as stated in this Bill and feel that the operating Department's role in the acquisition process should be enhanced.

The use of the capital fund for ADP may have merit if the centralized control of the acquisition process is retained. However, details of operation of the capital fund are not sufficient for a full evaluation at this time.

Bill #5 (Current Texas Statute). The concept of operation described in Bill #5 appears, at first glance, to be the most favorable for the Department of Transportation since it gives the Department the responsibility to effectively control ADP operations and yet contains sufficient "checks and balances" to insure that ADP services and goods are acquired in an efficient, economical, and non-duplicative manner.

I am somewhat concerned, however, that by assigning the coordinating and advising function to the Office of the Legislative Auditor, the Legislature would be performing functions which more properly belong to the Executive Branch. Accordingly, I would prefer that consideration be given to changing the existing functions of the Department of Budget and Fiscal Planning to those provided in Bill #5. (See proposed draft Bill #6).

Action should also be taken to modify and strengthen the position of the Governor's ADP Management Review Board in setting Statewide standards and procedures. This strengthening, combined with the modified functions for the Department of Budget and Fiscal Planning recommended above, will allow the Governor to have his (1) Budget Department provide overall coordination and advisory functions; (2) establish Statewide standards and procedures through the efforts of the ADP Management Review Board, and (3) place the responsibility for this important operation in the hands of the various Secretaries.

Insofar as Section 231 G (f) of Article 41 is concerned, it is not clear what goods and services are covered by the proposed procedures. Additionally, the proposed Section appears to duplicate language contained in present Section 231 G (d).

In addition, the Bill has a very strong "bid" orientation which is considered too detailed for inclusion in a bill dealing with basic State policy on management of data processing resources.

DRAFT

A BILL ENTITLED

An ACT concerning Automatic Data Processing for State Agencies.

For the purpose of authorizing the Department of Budget and Fiscal Planning to coordinate Automatic Data Processing used by State Agencies; to describe the responsibilities, duties, and authorities of the Department of the Budget and the State Agencies with respect to utilization and acquisition of automatic data processing systems and equipment.

By repealing and reenacting, with amendments:

Article 15A - Budget and Fiscal Planning

Section 23B

Annotated Code of Maryland

(1976 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 23B of Article 15A - Budget and Fiscal Planning, of the Annotated Code of Maryland (1976 Replacement Volume) be and it is hereby repealed and reenacted as follows:

Article 15A - Budget and Fiscal Planning.

23B

The Secretary, after consultation with the State Comptroller, shall be responsible for planning and controlling data processing in the several departments and agencies of the State government. The Secretary shall continuously study the data processing function within the State in order to improve its efficiency and economy. All changes effected by any department or agency pertaining to data processing shall first be reviewed and approved by the Secretary for compatibility with existing procedures and equipment. The purchase, lease, or rental of mechanical or electronic data processing equipment for all State departments and agencies shall be reviewed and approved by the Secretary prior to the purchase, lease or rental.

(A) THE SECRETARY SHALL MAINTAIN COMPREHENSIVE CURRENT INFORMATION RELATING TO ALL AUTOMATIC DATA PROCESSING SYSTEMS, EQUIPMENT, AND RELATED ITEMS. HE SHALL ADVISE THE GOVERNOR AND THE SEVERAL EXECUTIVE DEPARTMENTS AND AGENCIES AS TO THE NEED FOR AND FEASIBILITY OF AUTOMATIC DATA PROCESSING EQUIPMENT INSTALLATION. HE SHALL PROVIDE REQUIRED ASSISTANCE TO THE END THAT EACH STATE AGENCY SHOULD BE ABLE TO ATTAIN THE MOST EFFICIENT AND ECONOMICAL OPERATIONS IN ITS SYSTEM OF DATA COLLECTING, PROCESSING, AND STORING.

- (B) THE SECRETARY SHALL DEVELOP AND MAINTAIN ORDERLY AND CONTINUING PLANS FOR ENDING UNNECESSARY DUPLICATION, BY AND BETWEEN STATE AGENCIES AND DEPARTMENTS, OF AUTOMATIC DATA PROCESSING STAFF AND EQUIPMENT. HE SHALL ALSO ADVISE AS TO THE ECONOMIC FEASIBILITY OF THE INSTALLATION, EITHER IN AN AGENCY OR DEPARTMENT OR BY COOPERATIVE AGREEMENTS BETWEEN AGENCIES, OF AUTOMATIC DATA PROCESSING SERVICES FOR AGENCIES NOT HAVING SUCH INSTALLATIONS, OR HAVING PARTIAL INSTALLATIONS AND SHALL ASSIST THE AGENCIES IN ESTABLISHING THESE COOPERATIVE AGREEMENTS.
- (C) EACH STATE AGENCY AND DEPARTMENT SHALL COOPERATE FULLY WITH THE SECRETARY TO PROVIDE COMPLETE AND ACCURATE INFORMATION ON CURRENT OR PLANNED USE OF AUTOMATIC DATA PROCESSING EQUIPMENT, SYSTEMS, AND STAFF, AND SHALL MAKE AVAILABLE ALL OTHER INFORMATION THE DEPARTMENT MAY DEEM NECESSARY FOR COMPLETE AND ACCURATE EVALUATION OF AUTOMATIC DATA PROCESSING BY STATE AGENCIES, FOR THE DEVELOPMENT OF A CONTINUING PLAN, AND FOR THE POSSIBLE, EVENTUAL IMPLEMENTATION OF A COMPREHENSIVE DATA PROCESSING CENTER OR CENTERS.
- (D) THE SECRETARY SHALL SUBMIT ANNUALLY, ON OR BEFORE JANUARY 1, TO THE GENERAL ASSEMBLY OF MARYLAND AND THE GOVERNOR A CURRENT STATUS REPORT ON THE ACCOMPLISHMENTS RELATING TO AUTOMATIC DATA PROCESSING PLANS, UTILIZATION, AND ACTIVITIES. ON THE EVENNUMBERED YEARS, THE DEPARTMENT SHALL ALSO FILE WITH THE GENERAL ASSEMBLY OF MARYLAND AND THE GOVERNOR SPECIFIC RECOMMENDATIONS FOR FURTHER ACCOMPLISHING OF THE PURPOSES OF THIS ACT.
- (E) FUNDS APPROPRIATED AND BUDGETED BY AGLNCIES AND DEPARTMENTS FOR THE ACQUISITION OF COMPUTER AND COMPUTER-RELATED EQUIPMENT OR SERVICES, INCLUDING SOFTWARE PROGRAM PRODUCTS AND THE EMPLOYMENT ON A FEE BASIS OF ANY PRIVATE FIRM OR PERSON ACTING IN THE CAPACITY OF DATA PROCESSING CONSULTANT OR SUPPLYING COMPUTER SUPPORT SERVICES FOR ANY EXECUTIVE, LEGISLATIVE OR JUDICIAL DEPARTMENT OR AGENCY, SHALL BE EXPENDED ONLY AFTER A DETERMINATION BY THE GOVERNOR THAT THE FOLLOWING HAVE OCCURRED: A DETAILED REPORT HAS BEEN PREPARED OUTLINING THE STEPS TAKEN TO UTILIZE LIKE RESOURCES ALREADY EXISTING WITHIN THE AGENCIES OF THE STATE AND THE CONDITIONS REQUIRING THE ADDITIONAL RESOURCES; AND THE ADVICE AND ASSISTANCE OF THE SECRETARY HAVE BEEN SOUGHT IN THE PROPOSED EXPENDITURE.
- (F) THE SECRETARY SHALL ACT AS CHAIRMAN OF AN AUTOMATIC DATA PROCESSING MANAGEMENT REVIEW BOARD, COMPRISED OF SENIOR REPRESENTATIVES OF STATE AGENCIES AND DEPARTMENTS AS DESIGNATED BY THE GOVERNOR. THE MANAGEMENT REVIEW BOARD SHALL PROVIDE EXECUTIVE GUIDANCE IN THE FORMULATION AND REVIEW OF PLANS AND POLICIES FOR THE DEVELOPMENT, ACQUISITION, AND UTILIZATION OF STATE AUTOMATIC DATA PROCESSING RESOURCES AND SHALL APPROVE AND CAUSE TO BE PROMULGATED THESE PLANS AND POLICIES SUBJECT TO THE APPROVAL OF THE GOVERNOR. THE MANAGEMENT REVIEW BOARD SHALL UTILIZE THE RESOURCES AND ASSISTANCE OF THE DEPARTMENT OF BUDGET AND FISCAL PLANNING AND OTHER APPROPRIATE AGENCIES AS NECESSARY.

SECTION 2. AND BE IT FURTHER ENACTED, That all laws or parts of laws, public general or public local, inconsistent with this Act, are repealed to the extent of the inconsistency.

SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application, and to this end all the provisions of this Act are declared to be severable.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect on July 1, 1977.

A A CONTRACTOR OF STATE

100 000



MARVIN MANDEL GOVERNOR

ROBERT J. LALLY

PUBLIC SAFETY AND CORRECTIONAL SERVICES

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

EXECUTIVE PLAZA ONE . HUNT VALLEY, MARYLAND 21031

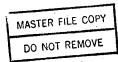
(301) 667-1100

W. DONALD POINTER OEPUTY SECRETARY FOR CORRECTIONAL SERVICES

June 29, 1976

EDWIN R. TULLY OFPUTY SECRETARY FOR PUBLIC SAFETY

The Honorable Dennis F. Rasmussen Chairman, Subcommittee on State Data Processing House Committee on Appropriations Legislative Services Building 90 State Circle, Room 226F Post Office Box 231 Annapolis, Maryland 21404



Dear Delegate Rasmussen:

I have reviewed the five draft bills pertaining to current ADP procedures as you requested by letter of June 23, 1976. It would appear to me that the current data processing procedures. as outlined in the State of Maryland Data Processing Standards Manual are working. In reviewing the draft egislation, the procurement procedures would be formalized by legislation and thereby be most difficult to amend. Data processing is an ever-changing environment with new and more sophisticated equipment constantly being offered. The services provided by the software houses and consultant firms vary from firm to firm and project to project. There is a need to allow the various Secretaries, Data Centers, and Management Information Systems Division of Budget and Fiscal Planning flexibility to modify procurement procedures which would be in the best interest of the State. We are most willing to work with the Management Information Systems Division and others to update the existing State of Maryland Data Processing Standards Manual. This would help to clarify and/or correct any deficiencies in the current ADP procurement and contract regulations which might exist.

If I can be of any help to your Committee, please do not hesitate to call upon me.

Sincerely,

SECRETÁRY

RJL/LHS/laf



MARVIN MANDEL

MICHAEL S SILVER

EXECUTIVE DEPARTMENT

GOVERNOR'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE SUITE 302. EXECUTIVE PLAZA ONE COCKEYSVILLE, MARYLAND 21030 RECEIVE

PHONE. 301-666-9610

RICHARD C WERTZ

June 30, 1976

Mr. Dennis F. Rasmussen
Chairman
Subcommittee on State Data Processing
House Committee on Appropriations
Legislative Services Building
90 State Circle, Room 226F
Post Office Box 231
Annapolis, Maryland 21404

DO NOT REMOVE

Dear Mr. Rasmussen:

This is in response to your letter of June 23, 1976 relating to the proposed bills on the subject of state data processing acquisition of equipment, services and other related automation paraphernalia.

We have attached the procurement regulations which our grantees are required to follow. Additionally, it should be noted that LEAA requires prior approval on all data processing equipment acquisitions or rentals.

If you have any questions in regard to this material, please contact us.

Sincerely,

Donald E. Wilson

Director of Administration

DEW/dc Attachment

PROCUREMENT STANDARDS

- 1. This attachment provides standards for use by the State and local governments in establishing procedures for the procurement of supplies, equipment, construction, and other services with Federal grant funds. These standards are furnished to insure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive orders. No additional requirements shall be imposed by the Federal agencies upon the grantees unless specifically required by Federal law or Executive orders.
- 2. The standards contained in this attachment do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the grantor agency regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant. This includes but is not limited to: disputes, cl. ims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.
- 3. Grantees may use their own procurement regulations which reflect applicable State and local law, rules and regulations provided that procurements made with Federal grant funds adhere to the standards set forth as follows:
- a. The grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Federal grant funds. Grantee's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by State or local law, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the grantee officers, employees, or agents, or by contractors or their agents.

- b. All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.
- c. The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:
- (1) Proposed procurement actions shall be reviewed by grantee officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.
- (2) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by offerors should be clearly specified.
- (3) Positive efforts shall be made by the grantees to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Federal grant funds.
- (4) The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.), shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.
- (5) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (6) below is necessary to accomplish sound procurement. However, procurements of \$2,500 or less need not be so advertised unless otherwise required by State or local law or regulations. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and

is most advantageous to the grantee, price and other factors considered. (Factors such as discounts, transportation costs, taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so, and such rejections are in accordance with applicable State and local law, rules, and regulations.

- (6) Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising. Generally, procurements may be negotiated by the grantee if:
- (a) The public exigency will not permit the delay incident to advertising;
- (b) The material or service to be procured is available from only one person or firm; (All contemplated sole source procurements where the aggregate expenditure is expected to exceed \$5,000 shall be referred to the grantor agency for prior approval.)
- (c) The aggregate amount involved does not exceed \$2,500;
- (d) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institutions;
- (e) The material or services are to be procured and used outside the limits of the United States and its possessions;
- (f) No acceptable bids have been received after formal advertising;
- (g) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture;
- (h) Otherwise authorized by law, rules, or regulations.

Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

- (7) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.
- (8) Procurement records or files for purchases in amounts in excess of \$2,500 shall provide at least the following pertinent information: justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated.
- (9) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely followup of all purchases.
- 4. The grantee shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all oontracts and subgrants:
- a. Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contracts terms, and provide for such sanctions and penalties as may be appropriate.
- b. All contracts, amounts for which are in excess of \$2,500, shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- c. In all contracts for construction or facility improvement awarded in excess of \$100,000, grantees shall observe the bonding requirements provided in Attachment B to this circular.

- d. All construction contracts awarded by recipients and their contractors or subgrantees having a value of more than \$10,000, shall contain a provision requiring compliance with Executive Order No. 11246, entitled "Equal Employment Opportunity," as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR, Part 60).
- e. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.
- f. When required by the Federal grant program legislation, all construction contracts awarded by grantees and subgrantees in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.
- g. Where applicable, all contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or

September 13, 1974

FMC 74-7 Attachment O

dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- h. Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Federal grantor agency. The contractor shall be advised as to the source of additional information regarding these matters.
- i. All negotiated contracts (except those of \$2,500 or less) awarded by grantees shall include a provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.
- j. Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the grantor agency and the Regional Office of the Environmental Protection Agency.

JAMES A. SENSENBAUGH



MARYLAND STATE DEPARTMENT OF EDUCATION STATE OFFICE BUILDING 301 West Preston Street, Baltimore 21201

June 29, 1976

The Honorable Dennis F. Raamusaen Chairman, Subcommittee on State Data Processing 90 State Circle, Room 226F Annapolia, Maryland 21404



Dear Sir:

Thank you for the opportunity to comment on the draft bills on the subject of State data processing acquisition of equipment, services and other related items.

BILL NO. 1

(Source: Current Budget Bureau Procedure Codified)

I are no advantage to legislating the current procedurea. Current problem areas are not corrected, and future correction would be made more cumbersome.

BILL NO. 2

(Source: Architecta and Engineera Subtitle with Modificationa)

Establiahing the procedure charging the Department of General Services with responsibility for ADP acquisition and contract administration would be creating one more opportunity for a breakdown in communication. In the presentation of the representatives from the Social Security Administration before your aubcommittee on June 16, 1976, it was indicated that additional requirements frequently come to light during the bidding process which cause modifications to the final bids, resulting in more appropriate acquisition of equipment and services. I think the data processing personnel most familiar with the agency's needs should be part of the bid evaluation team.

BILL NO. 3

(Source: Current California Statute)

Competitive bidding, while good for large acquiaitions, is very expensive and time consuming for small acquiaitions. Once again, except for the bidding procedure, no current problems in the acquisitioning are resolved.

BILL NO. 4

(Source: Federal Brooks Act of 1965 (PL 89-306))

This bill does address problem areaa in the current acquiaition pro-

cedures, namely the specification and funding of data processing equipment and servicea. I think that the agencies should have the authority to specify their data processing needs in the areas of equipment configurations and usage, because they have the best understanding of their needs. I like the fund for data processing equipment and services, especially in this time of tight budgets. I do suggest that the Secretary's right to operate data centers be limited also to the extent that it cannot be used to replace agency control of any existing data processing facility. Also, I was suprised to find that this bill does not address the issue of competitive bidding. I could support the \$25,000 value cutoff as specified in BILL NO. 2. Overall, I favor this bill. It would greatly improve the data processing support to the several agencies.

BILL NO. 5 (Source: Current Texas Statute)

I see no advantage to the State which would result from moving the control of data processing acquisitions from the Department of Budget and Fiscal Planning to the General Assembly. The current problems in the dats processing scquisition procedures do not seem to accrue from the authority being vested in any particular location. Indeed, the current location of this authority seems the logical one.

Sincerely

Thomas D. Aiken Data Center Msnager

Maryland State Department of Education



FOMUND C MESTER Executive Disector

STATE OF MARYLAND

BOARD OF TRUSTEES OF THE STATE COLLEGES JEFFREY BUILDING

16 FRANCIS STREET ANNAPOLIS MARYLAND 21401

RECEIVED : 3 1976

June 30, 1976

Mr. Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations General Assembly of Maryland Legislative Services Building 90 Stats Circls, Room 226F Post Office Box 231 Annapolis, Maryland 21404



Dear Mr. Rasmussen:

T have reviewed the five draft bills relating to the acquisition of Automatic Data Processing resources, as you requested in your June 23, 1976, letter to me.

Before I comment on the epecific bills, I would like to comment on the concept, set forth in several of the bills, that would restrict acquisition of ADP resources to competitive bidding. In my opinion, to apply this concept universally fails to recognize that both the hardware and software of various ADP suppliers tend to be incompatible, and hence that, once a data processing center has committed itself to procure its core system from a particular source, almost all subsequent expansion, augmentation, and supplementation of that system must be from that same source, or chaotic incompatibility will result.

Concerning Bill #1, I note that it is a nearly verbatim codification of the Department of Budget and Fiscal Planning Regulation No. .02.01.03. As that regulation is already bsing followed and rigidly enforced, there appears to be no advantage to be gained by codifying procedures which are not of the appropriate scope for inclusion in the Laws of Maryland.

With respect to Bill #2, I note that it would require competitive bidding only for acquisitions greater than \$25,000. Although there is definite merit in providing exceptions to the requirement for competitive bidding, a dollar criterion should not be the only basis for such exceptions. Exceptions should also apply in all cases of augmentation, sxpansion, and supplementation of existing systems, whenever compatibility with the existing system is necessary.

Mr. Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing June 30, 1976 Page Two

Also concerning Bill #2, I question the wisdom of centralizing ADP acquisition and contract administration in the Department of General Services. Users' experience with centralized procurement and purchasing of other, far less sophisticated, commodities indicates that a great reduction in efficiency and responsiveness would undoubtedly result from adding the acquisition and contract administration of this highly technical and specialized commodity to an agency not dedicated to ADP matters.

Bill #3 would violate the essential concept of compatibility among the components of an ADP system that I have discussed abovs. I do not disagres with the general concept of competitive bidding, and it should be required in the initial acquisition of a new core ADP system. Thereafter, however, all additional acquisitions must be compatible with the core system. This requirement generally dictates negotiated, sole-source procurement.

Bill #4 is essentially a codification of current policies being followed by the DB&FP, except for the establishment of a fund for mass purchase and maintenance of ADP resources. I believe that this bill should be clarified to preclude future inclusion of data center operating appropriations in the ADP fund. Otherwise, I find no objection to this bill.

With respect to Bill #5, I believe that it would be a mistake to transfer the executive-type functions of ADP administration from the Executive Branch to the Legislative Branch. Further, with respect to the additions to Article 41 contained in Bill #5, I do not consider it appropriate to codify such detailed operating procedures.

I shall be pleased to amplify any of the foregoing comments, chould you so wish.

With kindest personal regards, I am

Sincerely.

Edmund C. Mester Executive Director

ECM:sh



UNIVERSITY OF MARYLAND COLLEGE PARK 20742

July 15, 1976

The Honorable Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations Legislative Services Building 90 State Circle, Room 226F Post Office Box 231 Annapolis, Maryland 21404

Dear Delegate Rasmussen:

This is to thank you for your letter of June 30, 1976 extending until July 15, 1976 the date by which you requested that comments on five draft bills concerning the acquisition of computer equipment and services be submitted to the Subcommittee on State Data Processing. We appreciate this additional time and are now able to submit to you the comments on the individual draft bills that I promised in my letter of June 30, 1976 to you.

Before offering comment on each of the five draft bills separately, we would like to state some considerations applying to all of them, as follows:

 The bills do not strike a reasonable balance between monitoring agency procurement activities, on the one hand, and facilitating the agencies' fulfillment of their mission, on the other.

Many features of the bills would increase paperwork, lengthen clearance time, require some duplication of personnel between the control agency and the operating agency, and increase the substitution of external control for internal management responsibilities and judgment.

The bills would be burdensome on vendors as well as on operating agencies, for the compliance procedures required of vendors would be laborious with respect to both small items and large ones.



If it is believed that vendors need more protection than they have been receiving, we believe that improvement could more surely be expected to come from enforcement of reasonably drawn administrative regulations than from new statutory requirements.

-2-

Although the bills would amend present statutes governing 2. computer acquisition, they all miss an opportunity that was missed also in existing law and administrative regulation. It is the opportunity to define automatic data processing in a way that would promote the legislative objectives of fairness and economy in procurement while permitting the University and other public institutions of higher education to meet promptly and effectively their rapidly changing, growing and special needs. These needs occur time and time again in instruction and research.

> Where an external agency has the power to evaluate an institution's need for and utilization of particular types of computer equipment and to hold up or veto procurement, it is unavoidably the case that the external agency can delay or prevent innovation in the classroom, the progress of experimentation in the laboratory and the timely fulfillment of research contracts and grants. The University has already had problems in these respects.

> The opportunity to exercise national leadership in support of academic responsibility and initiative could be seized by the introduction in statute or administrative regulation of distinctions among (1) instructional computing, (2) research computing and (3) administrative computing. Administrative computing would involve the largest proportion of "automatic data processing." Wherever it occurs, in educational institutions or other agencies of government, it could be the subject of essentially uniform policies. Instructional and research computing could then be governed as other instructional and research activities are, and all subject to appropriately designed monitoring by external agencies.

3. None of the bills explicitly distinguishes between a pocket-sized electronic calculator and a major computer costing hundreds of thousands of dollars. One bill does exclude items costing less than \$25,000 from the competitive bidding requirement, but not from clearance procedures.

There is already needed, under existing statutes and administrative regulations, a recognition in principle that neither equity nor economy requires that the same review procedures that may be appropriate with respect to significant enhancements of computer power should be applied to all items, however small. Existing procurement policies and regulations affecting office machinery, furniture, laboratory equipment, supplies of all kinds, etc., should be adequate.

4. All but one of the bills leaves the Department of Budget and Fiscal Planning in its present difficult and vulnerable position both of reviewing other agencies' needs for computer equipment and of operating computer centers itself. This combination of monitoring functions with operating functions in the same area must, we think, put the Department under self-imposed pressure to be more formalistic and procedurally demanding than it would otherwise feel it necessary to be in its review procedures. At the same time, it leaves the Department's own computer operations and development unaffected by the review procedures other agencies must meet.

Although draft bill No. 5 would end this combination of roles, it raises other questions addressed below.

* * *

Our comments on the individual draft bills are as follows:

Draft Bill No.1

A. This bill would make the existing burdensome clearance procedures more difficult to adapt to needed changes than they are now. By converting administrative regulations into statutory requirements, they would eliminate the elements of flexibility that have been permitted under existing procedures of consultation, reporting and clearance.

- B. The bill's requirements would bear even more heavily than existing statutes and regulations upon instructional computing and research computing.
- C. The required procedures would increase the burden of paperwork and costly delays referred to above under general comments. The burdens would fall on both vendor and operating agency. The increased purchasing procedures in the external agency would duplicate much of the work now done in the University. This work of developing specifications, evaluating proposals and bids, designing contracts, etc., would still have to be done by the University.
- E. The bill would not free the Department of Budget and Fiscal Planning from its vulnerable dual role as monitor and operator.

Draft Bill No. 2

- A. This bill would add another clearance authority to the present clearance system. It would not economize on the review and approval activities of the Department of Budget and Fiscal Planning. It would add to costs and delays.
- B. It would bear more heavily upon instructional computing and research computing than does even the present system.
- C. It would not free the Department of Budget and Fiscal Planning from its dual role as monitor and operator.
- D. It would duplicate, or, worse, conflict with some of the University's necessary internal purchasing procedures; yet it would not save the University the work of scientifically evaluating its own administrative computing, instructional computing and research computing needs or spare it from the need to keep up with the state of the art and the condition of technology in each of these very different respects, or make it unnecessary for the University to carry to the last step all of the judgmental work of procurement.

Draft Bill No. 3

A. This bill would extend competitive bidding to the acquisition of all items of equipment or supply. There is no definition of computer or automatic data processing equipment, however small (e.g., a programmable pocket electronic calculator). There is no procedure for exceptions for emergency items, including replacement of a small unit or re-stocking of an unusual outage of consumable supplies. There is no provision for exception for the acquisition of a replacement part available only from one manufacturer. There is no exception for the acquisition of unique equipment needed promptly to fulfill a fully funded, externally funded research grant.

Draft Bill No. 4

- A. This bill would have the Department of Budget and Fiscal Planning retain its "planning and controlling" authority while receiving additional authority to create operating centers in addition to present ones and to reallocate without limit the computer resources available to other agencies. This augmentation of the authority of the Department would call sharply into question its combined role of monitoring other agencies while operating its own computer centers free of monitoring.
- B. If the bill specified that the University of Maryland and possibly certain other institutions or agencies were authorized to "operate automatic data processing equipment pools and automatic data processing Centers" with accompanying purchasing authority, it would not add to the costs of the State or the burdens on vendors or on the University. Yet it would then still bear unfairly upon institutions or agencies not so named.

Draft Bill No. 5

A. This bill has the virtue of freeing the Department of Budget and Fiscal Planning from the dual role of monitoring other agencies while operating its own computing centers free of monitoring.

- B. It has the virtue also of emphasizing that fairness, economy and effectiveness in computer acquisition is best approached by the method of establishing policies and then auditing performance under them rather than by establishing external control that requires advance approval of all steps taken by supposedly responsible and accountable operating agencies.
- C. The bill has a major defect, however, in vesting an auditing agency with the authority to evaluate all automatic data processing. If this is interpreted to mean all types of use and all computer applications, its burden upon the administrative computing, instructional computing and research computing applications of the University would be heavy. We believe it would also be inappropriate, applying an external judgment by a non-educational authority to substantive educational work and the work of internal management which are central to the University's mission and for which it is properly held accountable.
- D. The bill, like the others reviewed, fails to define automatic data processing in a way that distinguishes among administrative computing, instructional computing and research computing and provides for different treatment of them.
- E. It fails to state that in principle, judgment needs to be exercised in the definition of computers.
- F. The bill also fails to state that different procedures are appropriate for the treatment of small items as compared with larger ones.

* * *

We have appreciated the opportunity to comment on the five draft bills and would be glad to elaborate on any of the points we have made.

Sincerely,

Donald W. O'Connell Vice President for

General Administration

DWOC:vlm

The Honorable Dennis F. Rasmussen

cc: Dr. Wilson H. Elkins
Dr. Albin O. Kuhn
Dr. Calvin B. T. Lee
Dr. Robert L. Gluckstern
Dr. William P. Hytche
Dr. Stanley J. Drazek
Dr. Peter E. Wagner
Dr. Frank L. Bentz, Jr.
Mr. Donald L. Myers

Dr. Thomas B. Day -Mr. John P. Menard Mr. Robert E. Roberson Mr. Frederick N. Straughn

OFFICE OF THE VICE PRESIDENT FOR GENERAL ADMINISTRATION

UNIVERSITY OF MARYLAND COLLEGE PARK 20742

June 30, 1976

Mr. Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations Legislative Services Building 90 State Circle, Room 226F Post Office Box 231 Annapolis, Maryland 21404

MASTER FILE COFY
DO NOT REMOVE

Dear Mr. Rasmussen:

This is to respond to your letter of June 23, 1976 requesting review and comment in writing on five bills in draft form that the Subcommittee on State Data Processing has developed on the subject of the acquisition of data processing equipment and services.

I have consulted the several persons in the University to whom you addressed the same request you sent to me, and I have discussed the draft bills with President Elkins. I can say, therefore, that even the extremely short study we have been able to make since receiving the bills indicates that all five bills would present grave problems to the University.

We are deeply concerned that none of the bills makes any distinction between computing for administrative purposes and computing for instructional and research purposes. We believe that the differences among these three uses are profound in the areas of responsibility for curriculum decision-making and research performance and in the areas of productivity and economy measurement, to name just two broad areas of vital importance to the University.

We would mention also that as recently as December, 1975, the Chairmen of the House Appropriations Committee and the Senate Committee on Budget and Taxation, respectively, accepted and endorsed a revised University of Maryland Master Plan for Computing. One of the major features of this revision was to clarify and reinforce the conformity of the University's computer acquisition and development program with the requirements of the State of Maryland Master Plan for Computing. Since that time, and most recently this past month, the University has implemented reporting

Page Two June 30, 1976

on computer utilization and on computer installation security to the Department of Budget and Fiscal Planning. It has also introduced the use of the same BB-4 form for proposals to acquire computer equipment on services that we understand, all other State agencies use.

We are concerned, for the foregoing reasons, among others, over the possibility of new legislation that would appear certain to impact heavily and damagingly upon the University's programs.

We are now making the five draft bills the subject of detailed individual study, and I will convey the results to you before the end of the month of July for the consideration of the Subcommittee.

We all appreciate your sharing the draft bills with us and only regret that we could not respond in individual detail concerning the bills in the time available.

Sincerely,

Klowed Willower

Donald W. O'Connell Vice President for General Administration

DWOC:phb

cc: Dr. Wilson H. Elkins

Dr. Albin O. Kuhn

Dr. Calvin B. T. Lee

Dr. Robert L. Gluckstern

Dr. William P. Hytche

Dr. Stanley J. Drazek

Dr. Peter E. Wagner

Dr. Frank L. Bentz, Jr.

Mr. Donald L. Myers

WRITTEN TESTIMONY LEGISLATIVE BRANCH

DEPARTMENT OF FISCAL SERVICES



WILLIAM S. RATCHFORD, II

MARYLAND GENERAL ASSEMBLY P. O. Box 231

ANNAPOLIS, MARYLAND 21404

PIEDCE J LAMBOIN

LAWRENCE D SHUBNELL DIVISION OF SUDGET REVIEW

R LEE BENSON

July 19, 1976

Delegate Dennis F. Rasmussen 418 Eastern Avenue Baltimore, Maryland 21221

MASTER FILE COM DO NOT REMOVE

Dear Delegate Rasmussen:

You have requested my comments on draft legislation being considered by the Appropriation's Subcommittee on State Data Processing.

On June 30, 1976, the Legislative Auditor offered comments on the draft legislation and I concur with the points of view

I do want to reiterate the opposition of the Department of Fiscal Services to draft bill number 5 that would place responsibility for data processing under the Legislative Auditor. In my judgment, the administration of data processing is an executive function and should remain within the executive branch. The Legislative Auditor's role is one of oversight, not of operations, and combining the two leads to the detriment of both.

As to the other four bills, all attempt to provide a degree of competitive bidding and centralized control into the procurement of data processing equipment and supplies. Competitive bidding is highly useful although care should be taken to provide for emergency situations and to allow for instances where the low bid is not the best bid.

As to centralized control, it seems desirable that the control agency should not have an operational function. Furthermore, the operator of a multi-user computer facility should not be a large consumer of data processing. With these premises, the proper structure of data processing would be as follows:

Control - Department of Budget and Fiscal Planning Operator - Multi-user computer facility or facilities -Department of General Services

Operator - Single user computer facility - large departments such as Transportation or Public Safety & Correctional Services.

I trust this information will be of use to the subcommittee.

WSR/sjb cc: P. J. Lambdin Ratchford

Sincerely yours

William S. Director





Division of Andits State Office Building Baltimore, Md. 21201

PIERCE J. LAMBOIN, C. P. A. LEGISLATIVE AUDITOR

June 30, 1976

Mr. Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations Legislative Services Building 90 State Circle Annapolis, Maryland 21404



Dear Mr. Rasmussen:

We have reviewed the five draft bills on State Data Processing which you sent to this office for comment, and are pleased to offer the following comments -

Bill No. 1

This bill, which is essentially codifying our present system, permits an agency to avoid competitive bidding. Although we recognize that this flexibility may be justified in some cases, we do not feel that the bill places proper emphasis upon the importance of competitive bidding. We believe competitive bidding should be the primary requirement with tight restraint upon any procurements that are not bid competitively.

To subject the Legislature and the Judiciary to a process that is controlled by an Executive Agency, for procurement of data processing needs, appears questionable and contrary to the basis for our three-branch system of government. However, we do feel that it is most desirable to maintain compatability and coordination of data processing needs between the three branches.

A further comment is that we question the wisdom of incorporating detailed regulations into the law, thereby eliminating flexibility that is needed to cope with individual situations. It would appear desirable to have objectives and policy clearly defined in the law and then employ supporting regulations for administration of the law.

B111 No. 2

This bill appears desirable since it provides for centralized coordination and control of the State's data processing effort

as well as the centralization of the competitive purchasing of the data processing equipment. However, it does introduce the need for some degree of data processing technical knowledge in another agency, Purchasing of the Department of General Services, in addition to that which already exists in the coordinating department (Department of Budget and Fiscal Planning) and the using department. Special care must be taken in the competitive procurement of data processing needs to insure that the State does not align with a contractor who sounds good but cannot produce.

B111 No. 3

This bill effectively appears similar to Bill No. 2 with the exception that the competitive procurement may be handled by the using department; however, the bill is ambiguous on this point. A third department is not involved; however, it does require development of competitive bidding procedures in the respective using agencies, which is obviously more difficult to control than when a single agency is responsible, as in Bill No. 2. We question the fact that this bill, unlike Bill No. 2, does not make any provision for non-competitive bidding in unusual or emergency situations where competitive bidding could be detrimental to the State.

Bill No. 4

This bill gives greatly increased control of the State's data processing operation to the Department of Budget and Fiscal Planning. It provides for an automatic data processing fund which appears complicated, and we are not sure we understand exactly how it is intended to operate. Also, this bill makes no provision for competitive bidding, which we consider necessary. Overall, we do not consider this concentration of control in one department desirable for a service (data Processing) that is vital to the operation of other departments.

B111 No. 5

This bill abolishes the existing law, which places the authority for the planning and controlling of data processing under the Department of Budget and Fiscal Planning, and it puts the tools for this function within the Office of the Legislative Auditor. However, under the Legislative Auditor the function is advisory. There is no provision for enforcement - the extent of centralized coordination and control that the State has currently achieved would be lost.

Most importantly, we do not feel that it is proper for the Legislative Auditor, who has the responsibility to audit the various agencies of the State and serves the Legislative Branch, to also be involved in the formulation of the data processing functions of the Executive agencies.

-3-

We note that the addition to Article 41 - Executive and Administrative Departments, Section 231G.(f) of the Code is worded so broadly that it appears to apply to all purchases, and we wonder if this is the intent of the bill.

In summary, in our opinion, we feel that Bill No. 2 comes closest to improving the State's current automatic data processing procurement and contracts regulations.

Very truly yours,

Reconstruction Auditor

PJL/ah

cc: Mr. William S. Ratchford, II

CARL N. EVERSTINE



TELEPHONES. 301/267-5961 301/269-0611

DEPARTMENT OF LEGISLATIVE REFERENCE 90 State Circle - P.O. Box 348 Annapolis, Maryland 21404

June 30, 1976

Mr. Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations Legislative Services Building Room 226F Annapolis, Maryland 21404



Dear Mr. Chairman:

Reference is made to your letter of June 23, 1976 concerning draft bills on data processing, the following comments are hereby submitted.

Bill Number 1 is concerned with administrative procedures and is not rightly statutory material. The establishment of administrative rules, regulations and procedures must remain the prerogative of the official charged with carrying out his responsibilities. It would be unnessarily burdensome to have to go back through the legislative process to change detailed procedures. The constitutionality of including the Legislative and Judicial branches under these procedures should be checked.

Bill Number 2 has some merit, but would require a new section in General Services with qualified personnel to evaluate the data processing bids. I have misgivings about the cumbersome procedures which would follow.

Bill Number 3 would cause additional time lags in the acquisition of equipment and other related data processing services. If all installed equipment is leased from one vendor, additional sale source procurement can result in a better bargaining position for the State. There should be exceptions to any competitive bid requirements. Bill Number 4 appears to be establishing a Department of Data Processing. The presence of the large fund and the authority to establish and operate data processing centers is guite a task for the Department of Budget and Fiscal Planning to assume. However, the statement "THE SECRETARY SHALL NOT INTERFERE WITH, OR ATTEMPT TO CONTROL IN ANY WAY, THE USE MADE OF AUTOMATIC DATA PROCESSING EQUIPMENT OR COMPONENTS THEREOF BY ANY AGENCY", appears to negate any authority the Secretary might have. I would recommend that this sentence be deleted along with the preceding sentence "AUTHORITY SO CONFERRED UPON THE SECRETARY SHALL NOT BE SO CONSTRUED...".

I also recommend the deletion of the last three lines on page one beginning with the last word in the third line from the bottom ", AND TO ESTABLISH AND OPERATE EQUIPMENT POOLS...".

The use of General Services to aid in handling bid procedures could be added to this bill. With these changes, I believe Bill Number 4 to be the best of the five proposed bills.

With respect to Bill Number 5, the General Assembly certainly needs a small, highly qualified group of computer operations auditors charged with the responsibility for keeping themselves informed of computer utilization policies, goals, and development projects throughout the State. However, this bill does not provide for any centralized control or planning for the automated resources of the State. In addition, it is inappropriate for any component of the Legislative Branch to exercise administrative authority over agencies of the Executive and Judicial Branches of government. Perhaps in Texas the auditors are under the Executive Branch.

Sincerely,

finiting of 913.62

Anthony L. Merlo, Manager Computerized Legislative Processes

ALM/sjm

WRITTEN TESTIMONY JUDICIAL BRANCH

ADMINISTRATIVE OFFICE OF THE COURTS

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July 14, 1976

Honorable Dennis F. Rasmussen Chairman, Subcommittee on State Data Processing House Committee on Appropriations 131 House of Delegates Building Annapolis, Maryland 21404



Dear Mr. Chairman:

I should like to express my appreciation for your action in extending the deadline for response to your letter of June 23 to July 15. This additional time has given us the opportunity for much more extensive research, and has also allowed me to obtain the views of Chief Judge Murphy and Chief Judge Sweeney, as well as my Director and Deputy Director of Judicial Information Systems. As a consequence, I think that we can now provide your subcommittee with a much more helpful response than the one included in my letter to you of June 30, 1976.

The major portion of this response is contained in the attached memorandum of even date, subject "ADP Procurement - Draft Legislation". This embodies the views of the judicial branch of government with respect to the five draft bills enclosed with your letter of June 23. As you will see, the memorandum addresses mainly rather fundamental policy matters, although it also does include some general discussion of each of the five draft bills.

I should like to add some additional comments about the draft legislation, mainly along relatively technical lines. For purposes of emphasis, I reiterate that we do not oppose generally the concept of compulsory competitive bidding for ADP procurement, provided that the Constitutional doctrine of separation of powers is observed and provided that the bidding process is not made so restrictive that it will not operate efficiently.

With these principles in mind, I suggest the following considerations with respect to draft bills 3 and 4.

1. Neither bill should in any way amend Article 15A. Instead, the procurement provisions should be codified in 'rticle 78A, dealing with Public Works. I suggest this, not because the Board of Public Works has any particular authority to overrule the Constitutional doctrine of separation of powers, but because this is a more "neutral" article than that dealing with the Department of Budget and Fiscal Planning, or Article 41, dealing with the executive branch of government. Also, Article 78A does contain some provisions which presently apply across the board with respect to State contracts and other State dealings.

Since the procurement requirements are intended to apply to all three of the branches of State government, I submit that Article 78A is an appropriate place for them to be codified.

- 2. Whether draft bill 3 or draft bill 4 is the vehicle, it should be made clear that the procurement provisions do in fact apply to all three branches of government equally. Appropriate language to this effect does appear in draft bill 3, but it does not appear in draft bill 4.
- 3. It should be thoroughly understood, and perhaps spelled out in legislation, that any agency given the task of administering ADP procurement or consulting and advising about ADP procurement must be staffed with people having a strong ADP background. There are technical aspects of this type of procurement not present in the procurement of automobiles, stationery, desks, typewriters, etc.
- 4. Whether spelled out in statute or in some other manner, it should be clear that DATA-PRO should not be considered as the exclusive basis or even as a reference for procurement decisions.
 - 5. The legislation should include the following basic provisions:
- a. Competitive bidding should be required on all ADP procurements of \$25,000 or more for hardware, or \$10,000 or more for software contracts (including creation, modification, or patented products).
 - b. The potential user of the hardware or software should be involved in the setting of specifications. I think this concept exists under present law, and could well be carried forward under draft bill 3 or draft bill 4.
 - c. An eligible vendor's list should be maintained, and there should be provisions for removal from this list for cause. The list should be updated to include favorable and unfavorable experience with any given vendor by every State agency doing business with that vendor, maintenance capabilities of the vendor, the vendor's ability to meet deadlines, equipment and software compatability ratings and general fiscal posture of the vendor.
 - d. There should be some provision for appeal by an unsuccessful bidder from a procurement decision. At the present, there is really no very satisfactory method of resolving problems of this sort. Some thought might be given to following an approach like that of Chapter 239, Acts of 1976, dealing with criminal histories record information appeals. There should be a provision for ultimate judicial review, if the matter cannot be resolved within a particular agency or branch.

These comments are submitted in addition to those contained in the attached memorandum. I take the liberty of calling one further matter to your attention. I understand that the American Bar Association has very recently released a draft of a Model Procurement Code, and that both Kentucky and Tennessee are considering adoption of this Code. I have not seen the Code, so cannot comment on it, but it would appear that this might be worthy of some study by the Subcommittee.

Respectfully submitted,

William H. Adkins, II State Court Administrator

WHA: jc

cc: Hon. Robert C. Murphy Hon. Robert F. Sweeney

Mr. Michael W. Nieberding

Mr. Joseph Kovalevski Mr. Robert W. McKeever

Mr. Philip G. Martin

Mr. Arthur Southard

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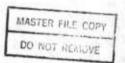
MEMORANDUM TO: Subcommittee on State Data Processing House

Appropriations Committee

FROM: William H. Adkins, II 642

SUBJECT: ADP Procurement - Draft Legislation

DATE: July 14, 1976



I. Background of Data Processing Controls in Maryland

Data processing systems, concepts, and equipment are peddled by sophisticated salesmen and are often surrounded by an aura of mystical magic that helps persuade the potential purchaser to assume they are the panacea for all his managerial problems. Especially in America, where we seem to be easily captivated by new technologies (or gimmicks, if you will), data processing has a strong appeal, even though we sometimes learn to our sorrow that ADP has its limitations, like any other technique. Data processing is also rather expensive. Thus, it is not hard to understand why a state government may feel the need for establishing some mechanisms for controlling the uncoordinated proliferation of data processing systems within units of government, the consequent expense, and the possible waste and inefficiency involved if data processing uses develop in an uncoordinated fashion.

In Maryland, statutory efforts to provide for such coordination date back at least to 1966. By Chapter 132 of the Acts of that year, Article 15 A Section 23 B was enacted, giving the Secretary of Budget and Fiscal Planning (then known as Director of the Budget Bureau) responsibility for planning and controlling data processing "in the several departments and agencies of the State government" in consultation with the Comptroller.

This statute was supplemented by an Executive Order of October 28, 1969, spelling out in some detail the duties and responsibilities of the Secretary of the Department of Budget and Fiscal Planning in this connection.

The procedures have been further supplemented by various manuals and regulations and by such documents as the State-wide Criminal Justice Information System Master Plan promulgated by the Governor's Commission on Law Enforcement and the Administration of Justice in 1975.

When the 1966 statute was enacted, neither the Legislative nor the Judicial branches of government were utilizing computers or any aspect of data processing. It seems clear, both from this fact and from the language of the statute, that it was directed at the Executive branch of government. This is also true of the 1969 Executive Order. Indeed, it would have to be true. Under Article II Section 1 of the Constitution, the Executive power of the State is vested in the Governor; he is not vested with Legislative or Judicial power and under Article 8 of the Declaration of Rights, cannot exercise or perform any function of another branch of government. The fact that this 1969 Executive Order purports to implement Article 15 A Section 23 B further reinforces the view that the statute was intended to apply only to Executive branch agencies.

Of course, a good deal of data has flowed through the computer since 1966 and data processing has spread considerably since then. In 1973, the General Assembly began using computerized bill preparation and even before then the Department of Legislative Reference had some experience with using a data bank containing the Code of Public General Laws. Also, before 1973, the Supreme Bench Automated Criminal Assignment System was established, although this was done initially through a grant from the Governor's Commission and on a local basis, so that it did not come into contact with the State system or procedures until federal funding expired and the funding of this system was picked up in the Administrative Office of the Courts portion of the Judiciary budget. I need not list the many other examples of use of data processing by the District Court or other elements of the Judiciary that have been instituted in the 1970's.

The growth of data processing activities within the Judicial branch of government has brought us into close contact with the Department of Budget and Fiscal Planning. Because of the preceding interpretation of Article 15 A Section 23 B, we believe it obvious that the Secretary's functions thereunder are essentially advisory to us. While there have been some conflicts, confrontations, and difficulties, I think it is fair to say that both the Judiciary and the Department of Budget and Fiscal Planning have been able to operate on an ad hoc basis with each party believing that it is achieving its essential goals. In other words, a practicle working relationship has been achieved and in those cases in which major confrontations have seemed imminent, one side or the other has backed off to achieve compromise and a pragmatic result.

Since the separation of powers doctrine applies to the General Assembly also, it would seem that a similar relationship might have developed between it and the Secretary.

This working relationship would be dramatically changed by at least some of the legislation now being considered by the House Appropriations Committee's Subcommittee on State Data Processing. The purpose of all of this legislation is no doubt laudable: to improve ADP procurement procedures and generally the control of ADP

activities in a manner that would be productive of efficiency in operations and savings in State expenditures. But the fashion in which these objectives are sought to be achieved in at least some of the draft bills requires an examination of a fundamental constitutional principle.

II. Constitutional Principles

The fundamental constitutional principle involved, of course, is the doctrine of separation of powers, as set forth in Article 8 of the Maryland Declaration of Rights. That Article reads:

That the Legislative, Executive, and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.

This principle is said to place upon the power of the State the same limitations placed upon the United States Government by the United States Constitution; Niles, Maryland Constitutional Law (1915) 19. It has also been said that the Maryland statement of this principle sets it forth "in the most unqualified terms..."; The Federalist No. 47 (1788). From an early period in Maryland, this principle has been held a vital one. For example, Chancellor Bland said: "This division and separation is the peculiar characteristic and great excellence of our Government"; The Chancellor's Case, 1 Bland 595 (1825).

Moreover, adherence to this basic tenent of the republican form of government is not limited to the Eighteenth or Nineteenth Centuries. The courts have been careful to preserve it even up to the present day. A recent example of this is found in Opinion of the Justices, 309 NE 2nd 476 (Mass. 1974). 1 Opinion of the Justices is particularly interesting because it involves an attempt by the Massachusetts legislature (the General Court) to place in an agency of the Executive Branch of government substantial control over ADP operations by all three branches of the government of that commonwealth.

The legislation involved there (Massachusetts H.B. 5293 of 1974) would have created the Electronic Data Processing and Telecommunications Services Department which would have had operational responsibility for those functions in all branches of the State government. The bill would also have created a Commission with power to "oversee, manage, and

¹ It is interesting to note that Article 30 of the Massachusetts Declaration of Rights, which establishes the principle of separation of powers there, has been cited in Maryland as an excellent example, having the same object in view as Article 8 of the Maryland Declaration of Rights; Crane vs. Meginnis, 1G & J 463 (1829).

develop policy for the Commonwealth's electronic data processing... needs and to oversee the management of... [the Department]." The Commission also would have had the power to "approve or disapprove all projects for the Department and to set priorities for such projects..." And the bill would have given the Department the power to "exercise fiscal control over... all... State agencies and departments using electronic data processing... services, including the General Court and the Judicial Department..."

In considering the constitutionality of this proposed legislation, the Supreme Judicial Court of Massachusetts recognized that "an absolute division of the three general types of functions [legislative, executive and judicial] is neither possible or always desirable"; 309 NE 2nd at 478. The Court also observed that while "promotion of economy and efficiency in government often dictate cooperation among the coordinate branches... [nevertheless] such efforts must take place within the limitations of Article 30..."; 309 NE 2nd at 479.

The Massachusetts Court believed that if the proposed department were to operate strictly in a service capacity for the several branches of government, with no involvement in internal management, separation of powers would not be violated. But it found that the proposed bill went far beyond establishing a service function. The Court concluded (309 NE 2nd at 482):

The bill creates an agency with power to exert control over all branches of government, and it thus antethetical to the notion of separation of powers. This notion does not necessarily preclude judicial participation on a voluntary basis in the sharing of data processing facilities and services, provided that such participation does not involve internal functioning of the judicial branch.

III. The Bills Now Before The Subcommittee On Data Processing

A. Bill No. 1

The approach taken by this bill is to amend Art. 15 A, Section 23 B to make the section expressly applicable to the legislature, judiciary, and the University of Maryland, in addition to the present application to the Executive Branch. In addition, a number of detailed provisions regarding procurement are added to the section.

This approach immediately raises several separation of powers questions.

In the first place, the existing language of section 23 B makes the Secretary of Budget and Fiscal Planning, in consultation with the Comptroller, "responsible for planning and controlling data processing in the several departments and agencies of the State Government." Apparently, this would give the Secretary responsibility for

planning these activities in both the legislative and judicial branches of government, and this would seem to be a clear violation of separation of powers.

Present Section 23 B also directs that any change "effected by any department or agency pertaining to data processing shall first be reviewed and approved by the Secretary for compatibility with existing procedures and equipment." Note that under this provision the Secretary is not exercising an advisory function, but apparently has the absolute power to approve or disapprove. This also would seem to raise separation of powers questions.

Present Section 23 B likewise gives the Secretary the authority to review and approve any purchase, lease, or rental of mechanical or electronic data processing equipment. As noted above, we have worked out a modus operandi under the present statute, which is not expressly applicable to the judiciary. Since this provision would also be made expressly applicable to both the judiciary and the legislature, it would seem again that separation of powers questions are raised.

The new material contained in Bill no. 1 essentially outlines the functions of the Secretary in connection with the review and approval of purchase, lease, or rental of ADP equipment and other goods and services. At the outset, it should be noted that this new material, in its reference to "automatic data processing equipment and other goods and services" is somewhat broader than the present statutory language which it purports to modify, since the present language relates only to equipment. It might also be noted that the indication that the only functions under the Secretary's control are those placed there by statute, the Governor, or the Board of Public Works does not resolve the separation of powers issue, since if the Secretary's control is a violation of separation of powers, this cannot be cured by the legislature, the Governor, or the Board of Public Works.

The new material then goes on to direct the Department of Budget and Fiscal Planning to monitor proceedings "at the review and comment stage when an RFP is used" and "at the contract approval stage for all contracts subject to these regulations." In addition, "agencies [presumably including the judiciary and the legislature] are responsible in all cases for obtaining approval of the Department of Budget and Fiscal Planning prior to the award of contract..."

The precise authority given to the Secretary and the Department pursuant to these provisions is not entirely clear to me. If it is only an authority to assist in the preparation of RFPs and other matters leading up to award of a contract, that might well be construed to be a service function and not a violation of separation of powers. But use of words like "monitor" and "approval" suggest a much broader authority here, and thus suggest possible problems.

Bill no. I goes on to provide that if an agency intends to use an RFP, a copy of the proposed RFP must be submitted to the Department

of Budget and Fiscal Planning for its review. The agency "is expected to comply with the comments of the Department of Budget and Fiscal Planning, while reserving its authority over the matters of substantive policy." There seems to be at least potential inconsistency here. Suppose the comments of the Department of Budget and Fiscal Planning in fact relate to "substantive policy"?

The Department is also given authority to review and approve or disapprove a proposed contract. While this might be appropriate if the approval or disapproval were based solely on matters of form or pertaining to statutory provisions as to standard matters required to be included in the contract, language in the bill suggests that the authority is in fact broader. The bill provides: "Contract approval will be based on the Department of Budget and Fiscal Planning's own analysis and investigation of the budgetary and procedural aspects of the contract, and of its overall advantage or disadvantage to the State, without infringement of the agency's authority in matters of policy, and without relinquishment of the Department of Budget and Fiscal Planning's oversight as to orderly, fair, and economical practices. [emphasis added]." Here, too, it would seem that there is some internal inconsistency, as a determination by the Department of Budget and Fiscal Planning that a contract is advantageous or disadvantageous to the State in an overall sense would seem to imply the ability to overrule the agency in matters of policy. Thus, this provision also raises substantial questions of violation of the separation of powers provision of the Declaration of Rights.

On a less basic level, one might well question the desirability of including in a statute the procedural and regulatory detail contained in Bill no. 1. As appears from some of the language (such as several references to "these regulations") much of the new material inserted in Bill no. 1 has been lifted bodily from present regulations dealing with ADP procurement. The inclusion of such detail and regulations, which can be modified from time to time as circumstances require, or the inclusion of such language in a manual which may not have absolute binding effect may well be appropriate. But setting forth provisions of this type in a statute which cannot be amended except at a session of the General Assembly is quite a different matter and deserves very careful consideration. If the major purpose of the bill is to require competitive bidding in ADP procurement, it would seem that that could be accomplished by a statute so requiring, and perhaps also setting forth any general exceptions to competitive bidding, with the detailed procedures left to implementation by regulation.

Bill no. 1 also contains several technical drafting problems, but it seems unnecessary to comment on them here; some of them are noted in my letter of June 30 to Subcommittee Chairman Rasmussen.

B. Bill No. 2

The thrust of this bill is to mandate competitive bidding with respect to ADP procurement, with the procedures to be administered

by the Department of General Services following general review and approval by the Secretary of Budget and Fiscal Planning. The competitive bidding requirement would apply to ADP acquisitions involving amounts in excess of \$25,000.

As Bill no. 2 is drawn, it is not made expressly applicable to either the legislative or judicial branches of government. It could be construed, like present Article 15 A, Section 23 B, as applicable essentially only to the Executive Branch.

Were the bill to be amended to be made specifically applicable to the legislative and judicial branches, it would raise some of the same separation of powers questions discussed above. These would relate mainly to the present language of Section 23 B, giving the Secretary of Budget and Fiscal Planning certain power to approve and plan; see the preceding discussion.

Should the bill be made applicable to all three branches of government, I would see no difficulty with a requirement that all ADP procurement or all ADP procurement above a certain amount be the subject of competitive bidding, and that the bidding procedure be conducted under the auspices of the Department of General Services.

Naturally, this assumes that the Department of General Services would be furnished with sufficient technical staff to administer these procedures. But once this assumption is made, there would seem to be no separation of powers obstacle to the imposition of a general state policy mandating competitive bidding. And the administrative services to be rendered by the Department of General Services in connection with this procedure would appear to be similar to the services rendered by that same Department in the maintenance and operation of public buildings, a function specifically said not to violate the concept of separation of powers in Opinion of the Justices.

C. Bill No. 3

Bill no. 3 is perhaps the least objectionable from the point of view of separation of powers. It would propose the addition of language to Article 15 A, Section 23 B, prohibiting the expenditure of any appropriation or any other funds by any state agency, including all three branches of government and the University of Maryland (apparently the fourth branch of government) for ADP purposes unless there had been competitive bidding.

While this bill imposes the competitive bidding requirement on all three branches of the government, it does not change the preceding language of Section 23 B and thus does not enlarge the authority of the Secretary of Budget and Fiscal Planning beyond the Executive Branch of Government. It simply establishes a policy requiring competitive bidding for all ADP matters. This would seem to be unobjectionable from the viewpoint of separation of powers.

It may be that the precise language of this proposed bill needs careful attention. For example, it would require competitive bidding for every single ADP related procurement, regardless of the smallness of the amount or the nature of the procurement. It applies to personnel and personal services as well as other ADP related matters and read literally, would require competitive bidding with respect to the hiring of ADP staff. I do not think this is intended.

D. Bill No. 4

This proposal is based on the Federal Brooks Act of 1965, which is codified as 40 U.S.C.A., Section 759.

The general concept is that the Secretary of Budget and Fiscal Planning would operate in effect what would be a data processing equipment pool. He would provide for the acquisition of automatic data processing equipment "suitable for efficient and effective use by State agencies" and could take various actions as to transfer of equipment between agencies, delegation to an agency of the power to operate its own equipment or pool or to purchase equipment, etc. All of this would be funded out of a general appropriation which would not be subject to reversion, but which would be subject to control by the General Assembly through a system of reports.

The Secretary would also be authorized to provide technical advice and to make recommendations to the Governor "relating to the establishment of uniform State automatic data processing standards." The bill provides that the authority conferred upon the Secretary "shall not be so construed as to impair or interfere with the determination by agencies of their individual automatic data processing equipment requirements, including the development and specifications for and the selection of the types and configurations of equipment needed. The Secretary shall not interfere with, or attempt to control in any way, the use made of automatic data processing equipment or components thereof." Any disagreement between an agency and the Secretary would be resolved by the Board of Public Works.

As it is presently drafted, Bill no. 4 does not apply to the legislative or judicial branches. This is because it suffers in translation from the federal statute. The federal statute uses the words "federal agencies" which have been translated into "State agencies". There is no statutory definition of "State agencies" providing that this term includes the legislative and judicial branches. But there is a definition of federal agencies which does make it all inclusive; 40 U.S.C.A. §472 (b).

Should this definitional problem be resolved by making Bill no. 4 applicable to the legislative and judicial branches, we would initially be faced with the separation of powers problems deriving from present Article 15 A, Section 23 B, since proposed Bill no. 4 amends this section. But aside from these problems, it would seem that the concept of proposed Bill no. 4 probably could be administered in a way

consistent with the notion of separation of powers. It is worthy of note that apparently no question along this line has been raised in the federal government, at least so far as the annotations in U.S.C.A. reveal.

Really, the thrust of Bill no. 4 is along the lines of establishing what is like a motor pool, except that the pool consists of automated data processing equipment. While there is some potential for possible internal control, and while the provision for review by the Board of Public Works obviously does not resolve this in a constitutional fashion, proper restraint on the part of the Secretary could well eliminate this difficulty.

It can, of course, be argued that a Secretary could effectuate internal control by the manner in which he provides equipment. That same argument could be made with respect to the actions of the Executive Branch or the Legislative Branch in dealing with the Judiciary budget.

As many of the authorities point out, the doctrine of separation of powers does not involve a Chinese wall. There are many areas in which some degree of activity across the line is involved. In these areas, the test would seem to be whether the action by one of the other branches so greatly hampers the branch under scrutiny that it would amount to a violation of the doctrine. If, for example, the General Assembly appropriated no funds whatsoever to the Judiciary, this would be unconstitutional. By the same token, if the Secretary simply declined to provide the Judiciary with any reasonable amount of ADP equipment support, this would probably be unconstitutional; see O'Coin's Inc. v. Treasurer of the County of Worcester, 287 NE 2d. 608 (Mass. 1972); and see, generally, Connors, "Inherent Power of the Courts - Management Tool or Rhetorical Weapon?", 1, The Justice System Journal (1974) 63.

Since the Constitution assumes a reasonable degree of restraint by officials of the various branches of government, and further assumes a reasonably pragmatic approach to governmental operations (at least within certain limits) it seems possible that the approach of Bill no. 4 could be both constitutional and workable.

E. Bill No. 5

This bill would repeal Article 15 A, Section 23 B, and in lieu thereof establish in the Office of the Legislative Auditor an Automatic Data Processing Systems Division. This division would develop and maintain plans for "ending unnecessary duplication... of staff and equipment used for data collection, processing and storage" and would "advise as to the economic feasibility of the installing, either in an agency or by cooperative agreements between agencies, of automatic data processing services for agencies not having such installations, or having partial installations."

Every state agency would be directed to cooperate fully with this systems division by making information available to it.

The bill would prohibit expenditure of funds appropriated for ADP purposes until after a determination by the Governor that:

- "A detailed report has been prepared outlining the steps taken to utilize like resources already existing within the agencies of the State and the conditions requiring the additional resources;"
- "and that the assistance of the Systems Division of the State Legislative Auditor's Office has been sought in the proposed expenditure."

These provisions would be coupled with additional statutory amendments apparently intended to require procurement by competitive bidding and placing the administration of the bidding procedures within the Department of General Services.

It is difficult to understand just why the general planning function should be transferred to the legislative auditor, when it has been performed for such a long time by the Department of Budget and Fiscal Services; perhaps the legislature might feel more in control of the process if the planning function were performed by an agency of the legislative branch.

It is also a little difficult to comprehend just what sort of authority would be given either this Systems Division or the Governor. Apparently, the Systems Division itself would serve in an advisory capacity; that precise phrase is used in Bill no. 5.

The Governor's role might be limited to a mere determination as to whether the two conditions above cited have been met. If so would seem to be unobjectionable; it would also seem to be a rather useless role to assign to the Governor. If it is assumed that the Governor would be given some power actually to review the detailed report or the assistance given by the Systems Division, and to approve or disapprove expenditures on a policy basis, there would be obvious constitutional problems.

So far as placing the administration of bid procedure in the Department of General Services, as I've indicated above, there would seem to be no major objection to this, so long as all concerned are aware of the possible delays and costs involved in this procedure. This is particularly important in connection with Bill no. 5, since as I read it, it would mandate competitive bidding for every single purchase of any sort of supplies or equipment by the State, not just for the procurement of ADP equipment.

In this connection, it might also be pointed out that the title of the bill is probably defective. But some tightening up with the language of the proposed amendments to Article 41, Section 2310(f)

could cure this difficulty.

IV. Conclusion

It is certainly understandable that the General Assembly as well as others involved in State Government should wish to take appropriate action to guide and to some degree control the growth of ADP activities. The elimination of duplication and overlapping, and the inhibition of unnecessary ADP activity are all in the interest of the State.

However, in this regard, it must be kept in mind that under our form of government, responsibility in such matters has to some degree been divided in three parts. This has been done on the assumption that there are some values more important than the technical efficiency which may be gained if all authority is placed in one set of hands. The trains may have run on time in Mussolini's Italy, but there were other aspects of life there that were not so desirable.

To say this is not to say that there is no way of promoting both efficiency and effectiveness in ADP matters. The legislature certainly has a part to play in its general appropriation process, and a great deal can be done on a cooperative and advisory basis; this is the approach of Chapter 239, Acts of 1976, with respect to the establishment of a criminal justice information system involving all three branches of government, and has also formed the basis of our present relationship with Budget and Fiscal Planning.

Moreover, to the extent that effectiveness and efficiency can be obtained through the method of giving a service function to an agency of one branch of government, under which services are provided to all three branches, there would seem to be no constitutional objection. Such services could include operation of ADP equipment or ADP centers and could also include the administration of competitive bidding procurement. With respect to such administration, constitutional questions would arise if the administering agency could make policy decisions about the need for a given procurement, but these questions would not arise if the administering agency merely carried out the competitive bidding procedure; nor would such questions appear to arise if the legislature enacted statutes requiring certain standard provisions to be placed in State contracts.

As to the wisdom of a broadly-mandated competitive bidding system, I suppose we possess no special expertise. There are clearly benefits to a system which will in fact promote competition between qualified vendors, since this sort of competition should tend to drive prices down.

On the other hand, the competitive bidding process is somewhat cumbersome and may well be protracted. Thus, it may not really produce savings in the event of relatively small procurements and may have to be eliminated in the case of some emergency procurements.

It also would seem fairly clear that the use of competitive bidding with respect to individual personnel services (with the possible exception of consultants) would not be feasible.

WHA:erp

ADMINISTRATIVE OFFICE OF THE COURTS

COURTS OF APPEAL BUILDING ANNAPOLIS, MARYLAND 21401 267-1141

STATE COURT ADMINISTRATOR William H. Adkins, II Deputy State Court Administrator Robert W. McKeever



ASSISTANT ADMINISTRATOR FREOERICK A. FARRIS ROBERT C. FRANKE J. ALLEN HINES JAMES F. LYNCH MICHAEL W. NIEBERDING

June 30, 1976

Hon. Dennis F. Rasmussen Subcommittee on State Data Processing House Committee on Appropriations P.O. Box 231 Annapolis, Maryland 21404

Dear Mr. Chairman:

This will acknowledge receipt of your letter of June 23, asking for comment on five draft bills enclosed with the letter dealing with the subject of data processing procurement.

Your letter reached this office on June 25; it calls for a response not later than the close of business on June 30. Although I worked on the matter over the weekend, I do not believe the time allowed for responding to your request is nearly adequate. At least some of the draft bills pose substantial policy questions as well as constitutional considerations of a fundamental nature. To respond properly with respect to such matters requires time both for research and consideration. In addition, because of the very basic nature of some of the issues, I do not think it is proper to give you what purports to be a definitive response until I have been able to consult not only with my Director of Judicial Information Systems, Mr. Nieberding, but also with Chief Judge Murphy and Chief Judge Sweeney.

Accordingly, I will include in this letter what cannot be characterized as more than a superficial analysis of the proposed bills. I should like to be permitted to submit a more carefully studied response at a later date.

Bill No. 1

It is this bill that gives me the most concern.

Hon. Dennis R. Rasmussen June 30, 1976 Page 2

Under the present provision of Article 15 A Section 23 B, it is not at all clear that the statute applies to either the Legislative or Judicial branches of government. There is no specific reference to either branch, and it is at least arguable that the phrase "several departments and agencies of State government" means the departments and agencies of the Executive branch. There is also a possible argument that the provisions now contained in Article 15 A Section 23 B could not constitutionally be applied to either the Legislative or Judicial branches, since this would give an official of the Executive Branch (the Secretary of Budget and Fiscal Planning) power to approve or disapprove certain internal policy and management matters with respect to the other two branches. Quite possibly, an attempt to grant such a power would violate Article 8 of the Maryland Declaration of Rights; see Opinion of the Justices , 309 NE2d. 476 (Mass. 1974).

Because most of the detailed procedures regarding ADP procurement are now spelled out in regulations or in a manual or in similar manners, it has been possible to work within them in a cooperative fashion without raising the constitutional issue. But Bill No. 1 would force all concerned to confront the constitutional problems, because it would specifically make Section 23 B applicable to the Legislature and the Judiciary.

I recognize that an effort is made in the bill to specify that the Secretary's authority relates only to procurement matters. For example, there is a statement on page 3 that the "agency" reserves "its authority over matters of substantive policy." Also, on page 5 it is said: "contract approval will be based on the Department of Budget and Fiscal Planning's own analysis and investigation of the budgetary and procedural aspects of the contract, and of its overall advantage or disadvantage to the state, without infringement of the agency's authority in matters of policy, and without relinquishment of the Department of Budget and Fiscal Planning's oversight as to orderly, fair, and economical practice."

Despite the disclaimer contained in this last-quoted sentence, it would seem to me that the broad authority given the Department in the very sentence tends to give the Secretary control over the internal management of other branches of State government.

As I have indicated, there has not been time for detailed research or analysis on these points, but a number of other provisions of Bill No. 1 would appear to contain possible transgressions of the separation of powers doctrine.

Hon. Dennis F. Rasmussen June 30, 1976 Page 3

On a less basic level, I think there is also a policy issue relating to the advisability of setting forth detailed regulations in statutory form. The inflexibility of this approach sometimes works in a counterproductive fashion. However, I am aware of legislative dissatisfaction with what is thought to be agency tampering with statutory law through the device of regulation adoption, and you are in as good a position to judge the beneficial or detrimental effect of placing regulations in statutory form as I am.

A quick glance at Bill No. 1 also shows a number of drafting difficulties, possibly reflecting the haste in which the draft was prepared. For example, the reference in the seventh line of page 2 to "III. C. 2" does not tie in with any portion of the draft bill; it would appear to be a reference to the regulations or the manual from which the provisions of the bill were taken.

In paragraph 4 on the same page, I suggest also that the last three sentences need major revision. The first of these sentences reads: "All agencies are responsible in all cases for obtaining the best price consistent with the objectives of the contract." I think that what is meant is that each agency in each case involving procurement by it is so responsible. But a literal reading of this language and of the last sentence in the same paragraph would make every State agency involved in procurement practices by every other State agency.

Bill No. 2

As I read this bill, it would make no change in present law except to vest in the Department of General Services the authority and duty of handling ADP procurement through competitive bidding. In addition, there is an apparent effort in Section 2 of the bill to require competitive bidding for all ADP procurement.

This bill does not specifically apply to the Legislative or Judicial branches and for the reasons indicated earlier in this letter. I am not sure it would be construed as so applying. However, my own off-hand opinion is that there would not be a constitutional objection to a statute mandating competitive bidding for ADP procurement and calling for the administration of the bidding procedure by either the Department of General Services or the Department of Budget and Fiscal Planning. The concept of Bill No. 2 appears to me the least objectionable from the point of view of both constitutionality and policy. Of course, this assumes that the Department of General Services has a technical staff of sufficient size and expertise to process these procurement matters promptly.

Hon. Dennis F. Rasmussen June 30, 1976 Page 4

Bill No. 3

This bill appears to mandate competitive bidding for all ADP procurement through the method of prohibiting spending appropriations or other funds for ADP matters unless these have been obtained through competitive bidding.

This bill differs from Bill No. 2 in that it does not make the Department of General Services the agency to handle bid and contract administration.

Here again, a quick review does not suggest major problems with this approach. I do raise the question of whether this may not be an overly-broad requirement for competitive bidding. Apparently, this would mandate competitive bidding for every single item, hardware, software, or whatever, if there was some connection with ADP. This may be going further than you really wish to go. By way of one example, there is a specific mention of "personnel." I think a strict reading of the statute would mean that if I wanted to hire a programmer, I could not do so by simply taking a person off a list of eligibles certified by the Department of Personnel; instead, I would have to go to competitive bidding to hire this person. If I did not do it, the bill says that I could not expend any money for his compensation.

Bill No. 4

This bill raises the possibility of some constitutional problems. Here again, I recognize that the bill says: "Authority so conferred upon the Secretary shall not be so construed as to impair or interfere with determination by agencies of their individual automatic data processing equipment requirements, including the development of specifications for and the selection of the types and configurations of equipment needed. The Secretary shall not interfere with, or attempt to control in any way, the use made of automatic data processing equipment or components thereof by any agency." And yet it seems to me there is perhaps almost inherent inconsistency between this disclaimer and the authority granted to the Secretary. For example, by exercising his authority with respect to transfer of equipment, by delegating or refusing to delegate the authority to lease or purchase equipment, by determining the manner in which the fund is to be used and expended, by providing or withholding scientific and technological services, the Secretary may have the very real power to govern internal policies in other branches of the government, if the bill should be construed as applicable to the Legislative or Judicial branches. I note that it does not expressly apply to either.

Hon. Dennis F. Rasmussen June 30, 1976 Page 5

Bill No. 5

This bill is apparently intended to establish an ADP Division in the office of the Legislative Auditor. It also seems to contemplate that procurement and contract administration shall be a function of the Department of General Services.

As indicated, 1 have no basic problem with the latter approach.

However, 1 am not sure how far this bill really is intended to go in vesting policy and managerial authority in the office of the Legislative Auditor. While there is some reference to that office serving "in an advisory capacity," I am not sure what the effect of negative advice from that office might have on a program or procurement. Perhaps the concept is that overall control should be maintained by the General Assembly on the basis of the reports required from the Legislative Auditor's office.

I am also somewhat concerned by the place given the Governor in this bill. While there is no express provision that the Governor can disapprove expenditures, he is given the power to determine that certain "facts have occurred." If this power is indeed limited to merely the mechanical determination that a detailed report has been prepared and that the assistance of the Legislative Auditor's office has been sought, then I don't see much purpose to the provision. If the real intent is for the Governor to review the adequacy of the report and to decide whether the procurement or program is to be undertaken, I perceive constitutional problems to the extent that this approach is applied to the Legislative or Judicial branches.

Trusting that this hasty response may be of some assistance to your deliberations, and with assurances that I will attempt to provide a more carefully-researched commentary in the near future, I am,

- 132 -

Sincerely yours,

William H. Adkins, II State Court Administrator

CC: Hon. Robert C. Murphy w/attach
Hon. Robert F. Sweeney w/attach

Robert W. McKeever, Esq. Michael W. Nieberding

Philip G. Martin

ADMINISTRATIVE OFFICE OF THE COURTS

COURTS OF APPEAL BUILDING ANNAPOLIS, MARYLAND 21401

STATE COURT ADMINISTRATOR
WILLIAM H. ADKINS, II
DEPUTY STATE COURT ADMINISTRATOR
ROBERT W. MCKEEVER



ASSISTANT ADMINISTRATORS FREDERICK A. FARRIS ROBERT C. FRANKE J. ALLEN HINES JAMES F. LYNGH MICHAEL W. NIEBERDING

June 30, 1976

Hon. Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations Legislative Services Building 90 State Circle, Room 226F Post Office Box 231 Annapolis, Maryland 21404

Re: Draft Legislation - Data Processing

Dear Delegate Rasmussen:

I have reviewed with interest the subject drafts and spoken with the State Court Administrator and his Deputy with respect to our comments. Mr. Adkins feels that Chief Judges Murphy and Sweeney should be apprised of the matter and allowed to comment as well.

In general we support the creation of strong procurement legislation with clear guidelines for the users and the purchasing agency as well. This is a highly specialized function and one where it is fitting to consolidate the required expertise.

Once beyond the procurement aspect, we do have strong constitutionally based reservations with respect to managerial and policy prerogatives. While there are definite similarities in management approaches, styles, methods, etc., we feel that the judiciary alone is capable of deciding whether a certain program is required or not when dealing with its internal administration.

With these thoughts in mind, we request the right to submit a more detailed critique of the draft legislation and perhaps provide some concrete

Letter to Del. Rasmussen Dated June 30, 1976

suggestions for improving them within the next several weeks. This will allow us to obtain the guidance of the Chief Judges mentioned above.

Sincerely,

Michael W. Nieberding

Director, Judicial Information Systems

MWN:jgd

ADMINISTRATIVE OFFICE OF THE COURTS

COURTS OF APPEAL BUILDING ANNAPOLIS, MARYLAND 21401

STATE COURT ADMINISTRATOR
WILLIAM H. ADKINS. II
OEPUTY STATE COURT ADMINISTRATOR
ROBERT W. MCKEEVER



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Sincerely,

Michael W. Nieberding

Director, Judicial Information Systems

MWN:jgd

ROBERT F. SWEENEY



MARGARET KOSTRITSKY

DISTRICT COURT BUILDING ROWE BOULEVARD AND TAYLOR AVENUE ANNAPOLIS, MARYLAND 21401 267-5486

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June 30, 1976

Mr. Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing House Committee on Appropriations Legislative Services Building 90 State Circle, Room 226F P. O. Box 231 Annapolis, MD 21404



Dear Mr. Rasmussen:

In response to your letter of June 23, 1976 addressed to Mrs. Margaret Kostritsky, regarding data processing equipment and service acquisition, our response to the various bill drafts follows:

Bill #1 abstracts a great deal of information contained in the State of Maryland Data Processing Standards Manual, which tends to "over control" the data processing function. The draft clearly defines the authority and role of the Department of Budget and Fiscal Planning in the acquisition process through review and approval of RFP's and contracts but does not mention any recourse if exception is made to the decisions rendered by the Department. This bill implies that the decision is final and on this basis there is some reason to object to the draft as it now stands.

 $\underline{\text{Bill}}$ #2 primarily addresses the channels through which data processing equipment and services are acquired and limiting factors utilizing the bid process. It does not appear to be broad enough to serve its intended purpose.

 $\underline{\text{Bill }\#3}$ is further restricted to the competitive bidding requirement only and falls into the same category as Bill #2.

Mr. Rasmussen 6/30/76 Page 2

 $\frac{\text{Bill }\#4}{\text{State's}}$ does not appear to be appropriate under the $\frac{\text{State's}}{\text{State's}}$ current fiscal process or to its less diversified operating environment. This bill would not enhance or improve upon the present method of acquiring either equipment or services.

 $\underline{\text{Bill}}$ #5 appears to be an adequate compromise of all suggested drafts although it may be immaterial to have the Systems Division attached to the Legislative Auditor or the Department of Budget and Fiscal Planning. This bill more closely adheres to the principles which would be acceptable to the District Court.

Time does not permit a more thorough study and response to the drafts of proposed legislation. However, we would be happy to respond further at a later time if desired.

Sincerely,

Joseph J. Kondenki

Joseph J. Kovalevski Data Systems Director

JJK/bcs

WRITTEN TESTIMONY COMPUTER INDUSTRY Comments on ADP Procurement Bills

Submitted by

Burroughs Corporation

J. E. Stevenson Branch Manager Lawrence Pokroy
Sales Rep. - Md. State Govt.



Bill No. 1 Current Budget Bureau Procedure

Current procedure gives the responsibility for review and approval of requests for ADP equipment to the Secretary of the Department of Budget and Fiscal Planning. It is our opinion that the responsibility for acquisition of ADP equipment should be separated from the Secretary of Budget and Fiscal Planning because he has the responsibility for audit and control over data processing. In effect, the agency charged with audit and control (in this case MISD) then reviews and approves their own actions. Part of the problem with data processing in the State today is that the audit and control agency has to a large extent become a line agency. MISD under Mr. Martin has direct line control over the Baltimore Computer Utility and exerts significant influence over all other data processing organizations. Clearly, the agency with responsibility for audit and control should not also have the responsibility for procurement.

Another weakness of Bill No. 1 is that it requires competitive bidding but includes a major loophole:

Unless the agency determines that solicitation of competing bids or proposals is contrary to established practice in the field or is inconsistent with the purpose of the contract or that informal solicitation of competing bids or proposals is customary and will afford definite cost advantages to the agency, compared to use of an RFP. (page 2, para. 4)

This paragraph nullifies mandatory competitive bidding because the discretion for its use rests with the user agency. The language is also too general. It is our belief that the State would be best served by identifying specific criteria which must be met to exonerate

Bill No. 1 (cont.)

an agency from going out on an RFP. For example, criteria might include: (1) the total dollar value of the planned upgrade should not exceed a certain amount before a competitive bid is made mandatory; (2) any change in or addition to a computer mainframe requires a competitive bid; and (3) any major addition to the scope of operations in an agency by change or addition to either hardware or software including re-systematization or a major re-design and re-write of software should be subject to a cost/performance analysis and alternative approaches should be considered. Mere explanation on a BB4 as to why a competitive bid procedure was not followed is inadequate. The responsibility for assuring adherence to competitive bidding should not rest with the agency but rather with a separate organization charged solely with the procurement responsibility.

Paragraphs 6, 7, 8 and 9 describe the procedure for preparation of the RFP and the subsequent awarding of a contract based on the winning vendor's bid. Burroughs finds no problems with these procedures.

Bill No. 2 Architects and Engineers Subtitle with Modifications

A prime concern of ours is with the current procedure which places procurement responsibility with the Department of Budget and Fiscal Planning. It is Burroughs opinion that this bill adequately addresses this concern. The Department of General Services presently has the responsibility for acquisition of all goods and services for the State with the exception of data processing. Given adequate staff and budget the Department of General Services could assume the responsibility for procurement of ADP equipment and services. Moreover, sufficient resources and expertise could be placed in this agency to provide assistance to user agencies in the preparation of RFP's and in their evaluation. They could also include in their staff persons experienced in data processing contract negotiations to assist the user agency in negotiating a contract most favorable to the State.

This bill also places a specific dollar value of \$25,000 as the determinant for when an upgrade or acquisition requires competitive bidding. Burroughs raises no objection to the \$25,000 figure.

We also concur with Article 41, para. 231G(a) which calls for both technical and price proposals from two or more firms and removes the discretion for not using the competitive procedure from the user agency.

It is our final opinion on this bill that the procedure for acquisition must be very specific and described in detail because

Bill No. 2 (cont.)

the user almost always looks for the easiest solution requiring the lesser amount of effort whether or not it offers the most cost-effective solution. Therefore, the user agency should not be permitted the discretion to determine the applicability of competitive bidding as it exists under current policy.

Bill No. 3 Current California Statute

This bill retains the responsibility for procurement as well as planning and controlling of data processing with the Secretary of the Department of Budget and Fiscal Planning. As previously stated, it is our opinion these two functions should be placed in separate agencies. We do concur with the rest of Article 15 A, para. 23B concerning the role of the Secretary. His office should continue to "study the data processing function within the State in order to improve its efficiency and economy."

Another concern we have with this bill is that it does not mention anything about removing line control over agencies responsible for data processing from the jurisdiction of the Department of Budget and Fiscal Planning. At present, MISD has responsibility for auditing data processing operations in the State as well as the responsibility for managing such operations. In effect this means that the reviewing agency reviews itself.

The last sentence of Article 15A, para. 23B states that:

No appropriations or funds obtained from any other source, may be expended by any state agency (including the legislative, judicial and executive branches, and the University of Maryland) pursuant to a contract for expansion, improvement or addition to automatic data processing activities, personnel, equipment, facilities or supplies, unless the contract for the acquisition or rental of equipment, personal services, or supplies is competitively bid.

This is very specific and we concur provided that the bill recognizes that in a few cases, a sole source procurement is justified provided it meets specific criteria such as we described in our evaluation of Bill No. 1.

As is our view concerning Bills No. 1 and No. 3 the responsibility for procurement of data processing equipment with the Department of Budget and Fiscal Planning is not in the best interest of either the State or the vendors. The planning and control function should be separate from the procurement function.

Concerning the operation of ADP equipment pools and ADP centers by one ore more State agencies with their authority delegated by the Secretary, this is the situation which exists currently in the State under the functional consolidated data center concept which is described in the "Focus ADP Master Plan."

The difficulty with this approach is that it is not necessarily true that consolidation achieves economies of scale. Economies achieved through this approach may be eclipsed by the rapid advancements occurring in computer technology. For example, the concept of distributive processing with mini-computers capable of storing data locally in their own data bases and doing their own processing while communicating with other remote computers in a network may offer the large user a more cost-effective solution than consolidation.

Further, consolidation of data processing activities tends to isolate the data processing resource from the user with the need for such a resource. Because consolidated data centers deal with multiple users, the concerns of an individual user may be neglected. Here, too, distributive or decentralized data processing would address this problem by locating the resource or direct access to the resource in the user agency.

Bill No. 4 (cont.)

Regarding the creation of an ADP fund, available without fiscal year limitation for expenses, this idea in our opinion has merit and is worthy of further consideration. Consolidating an agency's needs with the requirements of the fiscal year limitations can lead to neglect of some requisitions and stockpiling of others.

The paragraphs pertaining to the administration of the ADP fund seem to present no problem.

Bill No. 5 Current Texas Statute

Of the five draft bills, this bill and Bill No. 2 address our concern over the removal of data processing responsibility from the Department of Budget and Fiscal Planning. We have no objection to the retention of the review and approval authority with the Secretary of the Department of Budget and Fiscal Planning prior to the purchase, lease or rental of equipment.

The functions of the Systems Division described in this bill also create no difficulty for Burroughs.

Because this bill terminates the responsibility of the Department of Budget and Fiscal Planning for the utilization and acquisition of ADP systems and equipment and establishes an ADP Systems Division in the Office of the Legislative Auditor it is worthy of further consideration.

Regarding Article 41, para. 231 G.(f) at least for full-sized general purpose computer systems the newspaper notice period should allow more than seven (7) days for the receipt of bids.

We also agree that the Department should keep an up-to-date bidder's list of at least all major vendors plus those vendors expressing interest in bidding on particular types of equipment.

The cornerstone of this bill, we believe, is the paragraph on the award of the contract. We believe that these criteria for selection are reasonable and equitable and should be included in whatever bill the Subcommittee recommends.

We find no objections to any other provisions of the bill.

We thank the Subcommittee on Data Processing for the opportunity to comment on these draft bills. We hope that you have found our comments useful. If any members of the Subcommittee desire further information they may contact:

Burroughs Corporation
335 Clubhouse Road
Hunt Valley, Maryland 21031
Telephone: 667-1200

ATTN: Lawrence Pokroy

Internationel Businese Machines Corporation

100 East Pratt Street Baltimore, Maryland 21202 301/332-2200

June 29, 1976

MASTER FILE COPY

DO NOT REMOVE

Delegate Dennis F. Rasmussen Chairman Subcommittee on State Data Processing House Committee on Appropriations P. O. Box 231 Annapolis, Maryland 21404

Dear Delegate Rasmussen:

In reference to your letter of June 23, 1976, IBM is pleased to review your draft legislation on the subject of the acquisition of automatic data processing equipment and services.

Due to the extensive nature of bill number one, we have no specific comments at this time, but we will continue to study it. Since bills two through five pertain primarily to the State of Maryland's own organization, policy, and procedures, we do not anticipate any comment on them.

We would like to thank your Subcommittee for the opportunity to review this draft legislation. We look forward to continuing our service to the State of Maryland.

Very truly yours,

Tom Leiser

Thomas C. Leiser Marketing Representative

TCL/pb

cc: Mr. Dennis H. Parkinson

letter to you as quickly as I had intended, but as you can understand this obviously took quite a bit of thought, and I wanted to spend time developing what I felt were proper goals for the achievement of a bill in this area.

Following are four specific areas which I feel should be addressed in any State Data Processing Bill:

- A method of pin-pointing the financial and practical responsibility of Data Processing within the State of Maryland. I like the "Secretary" system since it does pin-point this responsibility as long as it does not duplicate the already existing structure of "The Department of Budget and Fiscal Planning Management Information System Division". This duplication should not be necessary.
- Competitive bidding should be encouraged! This could be accomplished in the following way:
 - a) Notification in the newspaper of those firms interested in bidding on future data processing requirements, register with the Secretary's Office. This develops a bidders list. This list would include Mainframe Vendors, Peripheral Vendors, and Third Party Leasing companies; all of whom could make a contribution to the State's Data Processing Program.
 - b) Each interested bidder should be able to receive a copy of the "Activities Schedule" developed by Management Information Systems. This would enable bidders to stay abreast of the State's plans for the year and would consequently increase bidding activity.

- Formal bid procedures, as you have outlined, should be accomplished.
- d) Those not receiving the bid should be formally advised as to why they did not. This is important since you would like to establish an atmosphere of positive bidding if you are to get the best product for the best price.
- 3. The third major area of concern that should be developed within this bill should be a consideration for "economic justification" within each of the data centers. "Is this application that we are preparing to add (additional hardware/software) economically justified?" This should be a formal requirement of each data center. "What is the estimated cost?" And later, after the application is on the system: "What was the actual cost?"
- 4. The final major goal should be to develop an incentive within this legislation to perform the specific services of each data center for the least cost and best performance. At the present time, the only goal appears to be to operate within a budget which is continually increasing. This could be accomplished by such methods as publicizing the agencies who are "performing to budget" in the best manner. Obviously, this is a difficult concept to develop, but would pay high rewards when implemented properly.

Dennis, as you can see, these goals must be further expanded, and I would be interested in working with your committee on any of the above areas. I personally favor Bill Number 5, with the modifications I have suggested. I feel a clear line of responsibility is necessary and that an open pool of financing is a dangerous concept. The concern that I had with Bill Number 5 is that this agency should not duplicate manpower-wise, an already existing group (MISD).

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If I can be of further assistance, please let me know. I am very interested in working with you to achieve a well-organized, positive competitive bidding program within the State. Good luck with your bill.

Sincerely,

MEMOREX CORPORATION

James W. Shaw, Jr. Branch Manager

JWS:gsr

cc.: Delegate John R. Hargreaves



P O. BOX 500 BLUE BELL, PENNSYLVANIA 19422 TELEPHONE (215) 542-4011

July 13, 1976

Mr. Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing Legislation Services Building 90 State Circle, Room 226F Post Office Box 231 Annapolis, Maryland 21404

Dear Mr. Rasmussen:

Your correspondence dated June 23, 1976, to Kurt Johnson, is locally being handled by Andy Poffel, Sperry Univac's Account Representative for the State of Maryland. He asked me, in my capacity as Manager of Public Sector Marketing, Eastern Operations, to review the several bills accompanying your correspondence. I have discussed the "bills" with appropriate individuals in Sperry Univac and have summarized our comments, views and recommendations in Appendix A.

We want to thank you for the opportunity permitting us to comment on the "bill" drafts and applaud your efforts to write this very important piece of legislation. If we can be of further assistance or if you wish clarification of the comments made in Appendix A, we will be glad to discuss them further at your convenience.

Very truly yours,

William C. Madden Manager of Public Sector Marketing

WCM:ada Enclosure

cc: A. Poffel



APPENDIX A

We have reviewed the five proposed legislative bills sent to us in your correspondence of June 23, 1976. We have attempted to summarize only the major areas of concern in each of the bills.

General

It is our feeling that bill No. 5 (Current Texas Statute) as amended by us, in all aspects, i.e., organization, control, definition of competitive award, bid evaluation, selection, etc., is the most comprehensive, and thereby worthy of your most careful consideration.

However, regardless of the bill you finally adopt, the following represent the minimum considerations Sperry Univac deems appropriate in any competitive procurement legislation:

- 1. All contracts for <u>rental</u>, <u>lease</u> or <u>purchase</u> of EDP equipment in excess of \$5,000 in any one fiscal year shall be let by competitive bid.
- 2. The only exception will be when the contract is under \$5,000 in one fiscal year or under an emergency basis for the protection of health, safety or property.

- The agency shall award the contract to the "lowest qualified bidder conforming to the specifications".
- 4. When an award is made, a statement of the basis for placing the order with the successful bidder shall be prepared and made available to all bidders.
- 5. A vendor may challenge the specifications by notifying the agency in writing of his intention to challenge the specifications and briefly explaining the nature of his challenge within ten days after the specifications have been sent to the vendor. The vendor shall reset the bid opening no later than thirty days after a final determination of the challenges to the specifications.
- 6. Such bill shall take effect as soon as practicable and need not await July 1, 1977.
- 7. Termination of the contract in the case of long term agreements should be subject to budgetary appropriation only.

Bill No. 1 (Current Budget Bureau Procedure - Codified)

<u>General</u>

While the substance of this "bill" is meritorious, its construction and base appears wordy, due primarily to the fact that it is a codification of a Budget Bureau Procedure. Much of the matter covered should remain in a procedures manual and not covered in the bill itself. In addition, the bill does not cover some important aspects of competitive bid selection, evaluation and control, particularly in the absence of providing for an award to the "lowest qualified bidder".

Specifics

23B(a) - pq. 1, line 6: The last sentence after the words "... by the Secretary", remove "for compatibility with existing procedures and equipment" and substitute "to ensure that the bidding process was followed".

23B(b)(1) - pq. 1, line 3: On the third line after the words "... that Purchase or Lease..." insert the words "or rental".

23B(b)(1) - pq. 1: States, "This section does not apply to: ... Supplies, Equipment and other goods purchased in accordance with department of General Services' Regulations". This quoted exception assumes that no conflict exists between this legislation and General Services' regulations.

- 23B(b)(1) pq. 2, line 1: Provides, "Contracts which do not exceed \$2,500..." Because lease and rental are monthly obligations and fiscal year is a factor, we feel that \$5,000 would be a reasonable dollar level and subject to review annually.
- 23B(b)(2) pq. 2, line 5: After the word "agency" insert "not in conflict with the provisions contained herein".
- 23B(b)(4) and (5): We feel strongly that these words are too subjective in nature and subject to possible arbitrary interpretation. We do not, therefore, see any advantage in including these articles in the bill legislation.
- 23B(b)(6) pq. 3: This article should be in the procedures manual, not the bill. Remove words in line 1 "When an agency intends to prepare an RFP and subsequently to enter" and substitute "The agency will prepare an RFP to enter".
- 23B(b)(7) pq. 3: This article should be in the procedures manual, not in the bill.
- 23B(b)(8) pq. 4: This article should be in the procedures manual, not in the bill, with the exception of the fifth paragraph covering budgetary funds availability, which should be included.
- 23B(b)(8) pg. 5. third paragraph: "An agency may comment..." While this is understandable, caution should be exercised that this privilege is not abused or used to circumvent the legislative intention.

23B(b)(9) - pq. 5: This should be in the procedures manual, not in the bill.

Sections 2 and 3 - pq. 5: No comment.

Section 4 - pq. 5: What is the reason to delay the effective date until July 1, 1977? If it is a salutary bill, it should be enacted promptly.

Bill No. 2 (Architects & Engineers Subtitle with Modification)

<u>General</u>

We feel this bill deals primarily with organization structure rather than the bid process, procedure and administration.

Specifics

23B, line 9 - pq. 1: After the words "or rental" insert "to ensure that the bidding process has been followed".

231G(a), line 2 - pq. 2: After the word "purchase", insert the words "lease or rent".

line 9: Change \$25,000 to \$5,000.

line 10: After the words "more firms", delete the
rest of the paragraph ending with the word "criterion".

Sections 3, 4 and 5 - pq. 2: Comments are the same as sections 2, 3 and 4, Bill No. 1.

Bill No. 3 (Current California Statute)

General

This bill is very shallow and not clear in its intent and purpose regarding the bid process and accountability.

Specifics

"For the purpose" clause, line 2 - pq. 1: After the word "acquisition" insert the word "lease".

23B, line 6 - pq. 1: After the word "Secretary", delete the words "for compatibility with existing procedures and equipment".

lines 8 - 15: The wording appears to be concerned with competitive bidding for appropriations of funds from "other Sources". Does this mean all others need not necessarily be competitively bid?

Further, the bill does not mention any dollar limitation, method of selection or evaluation, to determine the qualified vendor. Most important, it does not state that the award should be made to the "lowest qualified bidder conforming to the Specifications".

<u>Sections 2, 3 and 4 - pq. 1</u>: Comments appropriate to sections 2, 3 and 4 of Bill No. 1 apply.

Bill No. 4 (Federal Brooks Act of 1965 [PL89-306])

<u>General</u>

We feel that this bill is inappropriate and that it deals predominantly with the Federal Government's concern with inter-agency resource management and control and does not address the fundamentals of competitive bidding. Reference should be made to the regulation and procedures of GSA for their guidelines if interest continues in this bill. Most important, no reference is made that the award should be made to the "lowest qualified bidder conforming to the Specifications".

Bill No. 5 (Current Texas Statute)

Specifics

Pg. 1: No comments.

Pg. 2: No comments.

231G(f)(1), line 4 - pq. 3: After the word "purchased", insert the words "leased, or rented".

231G(f)(2), lines 6 and 7 - pq. 3: After the word "purchases", insert the words "leases or rentals".

231G(f)(5), line 2 - pq. 3: After the word "lowest", delete the words "and best" and insert "qualified".

lines 6 and 7: Delete the sentence, "In determining who is the lowest and best bidder, in addition to price, and department shall consider:" and insert in its place "The contract shall be awarded to the lowest qualified bidder conforming to the Specifications, unless the department proves that such bidder does not satisfy the following criteria".

231G(f)(6), line 3 - pq. 4: After the word "lowest", delete the words "and best" and insert "qualified".

Sections 4, 5 and 6 - pq. 4: Comments for sections 2, 3 and 4 of Bill No. 1 apply.

WRITTEN TESTIMONY MISCELLANEOUS

Mr. George Friedman 5661 Harber's Farm Road Apartment D Columbia, Maryland 21044

June 29, 1976

Honorable Dennis F. Rasmussen Chairman Subcommittee on State Data Processing House Committee on Appropriations Legislative Services Building 90 State Circle Room 226F Annapolis, Maryland 21404

Dear Mr. Rasmussen:

As requested, I am enclosing my views on each of the Bills you have referred to me.

Sincerely yours,

George Friedman

Enclosure

MASTER FILE CODY

1/2 01

Bill No. 1

This bill would put into law the current operating procedures of the Department of Budget and Fiscal Planning. As such it would make current regulations more difficult to modify. Procedures should be changed as dictated by experience. It will be too costly and time consuming to require a change in law every time the procedure should be changed.

I see no value to the State to burden the Department of Budget and Fiscal Services with the actual procurement and contractual responsibilities.

Bill No. 2

I would agree with charging the Department of General Services with the responsibility for the ADP acquisition and contract administration.

I do not recommend a fixed requirement for the use of competitive bidding. The flexibility provided for in Bill No. 1 would better meet the needs of the State. However, as spelled out in that bill, such procurement must be closely monitored by the Department of Budget and Fiscal Planning.

Bill No. 3

This bill would serve to fix responsibility for ADP in the State with the Department of Budget and Fiscal Planning. However, the insistence on competitive bid is unduly restrictive. The flexibility and safeguards in Bill No. 1 will achieve the same purpose without the insistence of a competitive bid procedure for every minutia acquisition.

Bill No. 4

This bill to be effective would require setting up a very powerful centralized data processing management organization with outstanding data processing experience and ability on its staff. The fund does have merit in that long range expenditures can be planned with assurance that funds will be available when

Bill No. 4

needed. There is genuine concern that the State will be creating an altogether too powerful organization that may unduly interfere with the functions of the Executive Departments in carrying out their missions.

Bill No. 5

I see in Bill No. 5 nothing more than a transfer of responsibility for management of the State's data processing activities from the Executive to the Legislature. The degree of centralization of ADP management is much less here than in Bill No. 4 or even Bill No. 1.

DEPARTMENT OF BIOPHYSICS

UNIVERSITY OF MARYLAND

SCHOOL OF MEDICINE

July 12, 1976

The Honorable Dennis F. Rasmussen, Chairman Subcommittee on State Data Processing c/o Division of Fiscal Research Legislative Services Building 90 State Circle, Room 226F Annapolis, Md. 21401

MASTER FILE COPY
DO NOT REMOVE

Dear Delegate Rasmussen:

I should like to make a few more comments related to ADP procurement. procedures. I note that under an executive order dated 28 October 1969 there was to be convened an ADP Management Review Board. The purpose of this board was to provide guidance and review of policies related to ADP acquisitions and utilization.

In an executive order dated 25 May 1976, the Governor specified policies related to open meetings. In that executive order the term "quasi-legislative function" is defined to mean (1) the adoption, amendment, or repeal of a rule, regulation, or by-law having the force of law, and (2) the approval, disapproval or amendment of a contract.

The RFP for acquisition of equipment and/or services must not contain compromising contractual requirements giving unfair advantage to any specific vendor. It appears to me that the RFP falls into the category of quasi-legislation. Should not vendors and other interested persons, groups or organizations be offered an opportunity at an open public meeting to request amendments to the RFP? Does the legislature too often delegate to the executive branch the power to make rules and regulations to implement a legislative directive? Is not making of rules and regulations, in fact, an extension of the legislative function and deserving of as much attention as the legislature gives to the passage of a law?

In the area of ADP procurement rules and regulations can implicitly give unfair advantage to specific vendors. I think it is important that all proposed rules and regulations dealing with ADP activities should be subject to public scrutiny prior to their adoption or implementation. I recommend that all proposed rules or changes to rules be printed and notice given for a public hearing at which the public can present their comments, cpinions, recommendations. This procedure will allow the State to determine whether there are contested issues and provide an opportunity to ameliorate the problem before issuing a regulation.

It appears that there is a need to review RFP's and ADP regulations. Who should be responsible for reviewing? I recommend a lay board appointed by the Governor. I suggest that MISD shall constitute the staff for this board. Legislation should preclude the appointment of agency representatives

and vendor agents or their employees. This board should be responsible for establishing rules and regulations for the coordination of ADP activities among the various state agencies as defined by the Federal Brookes Act.

Sincerely yours,

Albert Hybl, Ph.D. Assoc. Prof. of Biophysics President, AAUP-UMAB Chapter

AH: 1h

DEPARTMENT OF BIOPHYSICS

UNIVERSITY OF MARYLAND

SCHOOL OF MEDICINE

June 30, 1976

The Honorable Dennis Rasmussen State House Annapolis, Md. 21404 MASTER FILE COPY

DO NOT REMOVE

Dear Delegate Rasmussen:

It appears that there are two major areas related to ADP acquisition and use needing corrective and/or clarifying legislation. The first is to assure that the State is fair to all vendors. The second is to assure coordination between departments and agencies of the State in their utilization of computers.

I urge that Para (b) from Bill $\#l_1$ (The Federal Brooks Act) be added to Article 15A, Sec. 23B of the Maryland Code. However, I suggest that several amendments be made to it and to Para (a).

- (1) I recommend that Para (a) include the requirements for competitive bidding contained in the California Statute (Bill #3).
- (2) I urge that in Para (a) the phrase "planning and controlling" be changed to "coordinating" and the phrase "reviewed and approved by the Secretary for" be changed to "reviewed and certified by the Secretary as being.."
- (3) In Para (b) (page 2, Bill #4) I suggest that the term "DATA PROCESSING CENTERS" is too limited. You should consider adding "DATA PROCESSING CENTERS, Associated communications networks and remote terminal equipment."
- (4) I strongly urge that you identify several data processing centers in your legislation. I would hope that the UOM research/educational network would be specifically identified and that the UOM regents be delegated authority to lease, prichase, maintain equipment, etc. Such a network should, of course, provide equity in terms of accessibility to all campuses.

I should like to see the UOM involved in a spirit of cooperation with the Secretary in providing advisory services related to ADP processing, software standardization, etc. This appears to be possible under the proposals in Bill #4.

Sincerely yours,

Albert Hyba, Ph. D.

Assoc. Prof. of Biophysics President, AAUP-UMAB Chapter

AE: 1h



STATE OF MARYLAND DEPARTMENT OF GENERAL SERVICES

OFFICE OF THE SECRETARY

301 WEST PRESTON STREET BALTIMORE, MARYLAND 21201 TELEPHONE: 383.3980

GEORGE R. LEWIS

August 2, 1976

INSERTED IN THIS LOCATION DUE TO LATENESS OF RESPONSE.

The Honorable Dennis F. Rasmussen Chairman, Subcommittee on State Data Processing Legislative Services Building 90 State Circle, Room 226F Post Office Box 231 Annapolis, Maryland 21404

Dear Delegate Rasmussen:

In response to your letters of June 23 and June 30, 1976, we have reviewed the draft legislation submitted for our consideration pertaining to the acquisition of automatic data processing hardware, software, services and supplies. Our reaction to each of the five proposed bills is as follows:

Bill No. 1. The proposed legislation is too detailed and procedural. Further, it appears to be vague in certain instances. Examples: Page Two, line 7 - ". . . 111.C.2 unless clearly inapplicable, . . . "What does the 111.C.2 refer to and what agent is responsible for the determination of clear inapplicability? Page Two, line 20 - How does one define "an emergency situation?" Page Two, line 36 - The decision to waive competition is left to the Agency pursuing an ADP procurement, with decision-review exercised by Budget and Fiscal Planning. Is the monitoring of this decision early enough in the process to preclude embarrassment to the State, should the Agency decision to not seek competitive proposals be overruled? Page Two, lines 29, 45 and 47 contain references to "these regulations."
Presumably the reference should be to "this statute." Page Three, line 5 refers to ". . . emergencies," but the proposed Bill does not define "emergencies" as used within the Bill's context. Page Three, line 7 uses the word "implementation." Perhaps a better word would be "use. <u>Page Three, line 10.</u> What does the phrase ". . . authority over matters of substantive policy" mean? Who decides if a specific issue concerns an Agency's substantive policy? Page Three, line 11. The proposed Bill indicates that Budget and Fiscal Planning's failure "to comment at all on an RFP" does not necessarily imply approval. How long must an Agency wait for a comment until it may proceed? Page Three, line 17. The "OF" should be "OR".

Page Three, line 18. If the "It" refers to the Agency, the word "Agency" should be inserted in place of "It."

Page Three, line 21 refers to "a communication in the nature of an RFP." Why not use the word "solicitation'? Page Three, line 27. The phrase "as to the Agency's contractural requirements" is cumbersome. If the sentence of which this phrase is a part is intended to prohibit any discriminatory practices in procurement, why not say that? Page Three, line 37 contains the word "rewarded." The word should be "reworded," we believe.

Page Three, line 40. We would recommend the word "execute" in place of "implement" "implement. Page Three, line 43 indicates that the contract should include a "scope of services adequate. . . to inform. . . any third person without special knowledge of the background of the contract. . . " We wonder if this is a practical requirement. Shouldn't the test of understanding be administered to "someone with reasonable facility in Data Processing applications" as opposed to "any third person"? Page Three, line 51. Shouldn't the word "schedule" follow the word "payment"? Page Three, line 53 contains references to "materials" and "supplies." We are not certain of the difference between the two words in context. Page Four, line 3. We do not understand the meaning of this requirement.

Page Four, line 27. As an alternative to the phrase ". . . be more liberal than corresponding. . . ," we would recommend ". . . exceed the entitlements in the. . Page Four, line 37. In place of the language "... the same in all or most contracts and permitting insertion of the matter which is different for each contract," we recommend insertion of "... common to most contracts and permitting insertion of special conditions peculiar to the specific contract." Additionally, since each Agency is probably not aware of the contract form used in all other agencies, it would be desirable for the proposed Bill, or regulation if the Bill is not filed, to include a sample contract form, including all the mandatory provisions and directions for those discretionary provisions allowed. Page Four, line 40. What are the "appropriate certifications" required of the Contractor and Agency Head? Page Four, line 50. In place of the existing language ". . . be approved and signed in advance. . . ," we would recommend ". . . be formally approved for form and legal sufficiency. . . " Following ". . . General," we recommend addition of the phrase "prior to execution by the Agency Head." Finally, we would delete "as to form and legal sufficiency."

Page Four, line 52. Is the "two working days" allowed for resolution of legal questions a realistic requirement? The time appears to be insuf-Page Five, line 8. What happens if an Agency commits itself to a contract without Budget and Fiscal Planning approval, in the interest of health, safety or property protection, and the "emergency" is challenged by Budget and Fiscal Planning after the fact?

Department of General Services' position concerning Bill No. 1: We question the necessity for adopting a statute which is so procedural and detailed in its focus. However, since the proposed Bill does not impact the Department, except as a consumer of Data Processing resources, we do not object to the proposal. We would recommend consideration of the changes suggested in the preceding paragraphs, as the final draft of the proposed Bill is prepared.

- Bill No. 2. This proposed Bill would assign to the Department of General Services ". . . preparation and dissimination of a competitive bid solicitation to various suppliers. . . " for the purchase, lease or rental of mechanical or electronic data processing equipment. Further, the Bill establishes a requirement that all ADP procurements with a value in excess of \$25,000 are to be "awarded on a competitive basis and shall include evaluations of both technical and price proposals from two or more firms. . . " In making the award, "neither the price proposal nor the technical proposal shall be the sole criterion."

 Department of General Services' position concerning Bill No. 2: The Department is opposed to this shift of responsibility because it does not, at the present time, possess the technical staff to competently judge the technical specifications contained in a request for proposal, nor does it have the staff to properly evaluate the technical and price proposals submitted in response to a solicitation for proposals. Before supporting a Bill which transfers the ADP procurement function, we would have to study carefully the total implications of the transfer of the technical and other resources of the Department.
- <u>Bill No. 3.</u> This proposed Bill would require competition in <u>all</u> ADP procurements. <u>Department of General Services' position concerning Bill No. 3:</u> The Department would support this proposal provided it was amended to allow non-competitive procurement of ADP resources if the exigencies of a specific procurement did not lend themselves to competition, as determined by the Department of Budget and Fiscal Planning.
- <u>Bill No. 4.</u> This proposed Bill would place considerable authority in the hands of the Secretary of Budget and Fiscal Planning. It would:

 Allow the Secretary to transfer ADP resources from one Agency to another;

- (2) Provide for establishment and operation of "equipment pools and Data Processing Centers for the use of two or more" agencies;
- (3) Allow delegation of authority to State Agencies for operation of Data Processing Centers;
- (4) Establish an "Automatic Data Processing Fund. . . without fiscal year limitation. . . "; and
- (5) Authorize the Secretary of Budget and Fiscal Planning to provide "scientific and technological advisory services relating to automatic data processing and related systems..."

matic data processing and related systems. . . "

Department of General Services' position concerning Bill No. 4: This Bill proposal is opposed because it is too broad in its implications. Disposition of ADP resources is a function which should be jointly performed, with a prerogative reserved to the ADP resource-owning Agency. To repose in a single Agency authority to dispose of all ADP resources would appear to be unnecessary. Similarly, to allow the Secretary to create ADP centers might invite duplication of resources and proliferation of services. The proposal is somewhat confusing in that it

prohibits interference by the Secretary of Budget and Fiscal Planning on the ADP resources of an Agency while, at the same time, it allows the Secretary broad latitudes in transfer and joint use of ADP resources.

Bill No. 5. This proposal would create, in the Office of the Legislative Auditor, an Automatic Data Processing Systems Division, which would provide advisory services to agencies possessing or pursuing an ADP resource. The Bill also prescribes a competitive selection procedure to be imposed on the Department of General Services concerning procurement of ADP resources.

Department of General Services' position concerning Bill No. 5: We do not object if the General Assembly desires to create a staff ADP specialist activity for itself. However, the "advisory" nature of the function could constitute a violation of the separation of powers principle expressed in the Constitution of the State of Maryland. We do oppose that section of Bill No. 5 which imposes a competitive bid procedure. Currently, the Department does not possess the technical staff to properly administer ADP procurements. Additionally, the proposed Bill requires award to the "lowest and best bid conforming to the specifications." Without proper technical staff, we would be hard pressed to make informed judgments concerning "best" proposal conforming to bid specifications.

We hope you find these comments responsive to the objectives of your Subcommittee. If additional information is required, please call.

Very truly yours

George R. Lewis

Secretary

GRL: fa

cc: J. Max Millstone Robin J. Zee Jerome W. Klasmeier

File: Data Processing - Draft Bills

